15 L.c

THE LAW OF BILLS of EXCHANGE, PROMISSORY NOTES, BANK-NOTES, and INSURANCES:

CONTAINING

All the STATUTES, CASES at large, ARGUMENTS, RESOLUTIONS, JUDGMENTS, DECREES, and CUSTOMS of MERCHANTS concerning them, methodically digeſted.

TOGETHER WITH

Rules and Examples for computing the EXCHANGE between ENGLAND and the principal Places of Trade in EUROPE.

ALSO

The ARBITRATIONS of EXCHANGE ſet in a clear and rational Light, and illuſtrated with Variety of Examples.

By T. CUNNINGHAM, Eſq;

The THIRD EDITION corrected,
With the Addition of ſeveral CASES, determined by the EARL of HARDWICKE and LORD MANSFIELD.

Miſera eſt Servitus, ubi Jus eſt vagum *aut incertum.* 4 Inſt. 246.

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PREFACE.

THOUGH we have ſeveral Collections of judicial Determinations on particular Subjects, as the Law of Arreſts, Awards, Corporations, Covenants, Diſtreſſes, *&c.* yet there is none concerning Bills of Exchange; which are undoubtedly Objects of ſome Attention, whether we conſider their great Utility, as the principal Medium of foreign and inland Commerce, or the very particular Nature of the Contract created between the Parties concerned in them. For "* the Covenant which paſſes "between the Perſon who gives the Money "and him who undertakes to remit it to ano-"ther Place, hath in it ſome particular Charac-"ters which diſtinguiſh it from other Kinds "of Covenants that ſeem to have ſome Re-"ſemblance with it."

To explain this Covenant, therefore, and render the Law concerning theſe Inſtruments of Trade better known and more univerſally underſtood, is the Deſign of the following Sheets; which contain not only all the Caſes in the *Reporters*, the *Dictionary of Trade and Commerce*, *Lex Mercatoria Rediviva*, and other Books on this Subject, but alſo ſuch as concern Promiſſory Notes, Bank Notes and Inſurances:

* Domat. B. 1. Tit. 16. §. 4.

And this the Editor has attempted to do, not by obtruding his own Thoughts upon the Reader in relation to any Point of Law, but by connecting together the Caſes that have been determined, in their natural Order.

The Caſes, except ſuch as have been taken from the Abridgments, are here inſerted at large: for though more than one Point of Law be ſometimes determined in the Report of one Caſe; yet the Editor hath choſen rather to inſert the whole Caſe under the principal Point, and afterwards refer to it, as Occaſion requires, than to mangle it by taking only that Part, which more immediately relates to the Matter treated of, and by that Means render it neceſſary for the Gentlemen of the Law and others to conſult the Original Reporters. But though moſt of the Caſes are inſerted at full Length, yet the Editor hath not ſcrupled now and then to take ſome Propoſitions from ſuch Caſes to throw greater Light upon what hath been ſaid by others; and therefore in the Table of the Names of the Caſes the Reader is referred to the ſeveral Pages where the ſame Caſe is cited.

Beſides the Caſes taken from the Reporters and other Books, the Reader will here find three Caſes that were never before printed. Theſe are the Caſes of *Heylins* and *Adamſon*, and *Goſs* and *Withers*, in the King's Bench in *Michaelmas* Term 1758; and the Caſe of Sir *Alexander Grant*, Bart. and Mr. *Innes* at *Guildhall*, the 15th of *May* 1759. Three Points of great Importance to Trade are determined in theſe

theſe Caſes. By the firſt, the Queſtion whether the Indorſee of an *Inland* Bill of Exchange, muſt, in an Action againſt the Indorſer, prove a Demand of the Money from the Drawer, is ſettled in the Negative. The ſecond aſcertains *when* the Property of a Ship taken by the Enemy is diveſted out of the Owner: And the laſt ſhows that, according to the Cuſtom of *London*, a Perſon may inſure the Body and Freight of a Ship *and the Premiums paid for them reſpectively*. In this the Plaintiff's Charge and the Defendant's Objections and Diſcharge are inſerted at Length; ſince, as there were two Verdicts for the Plaintiff, one againſt Mr. *Innes* and the other againſt Mr. *Roebuck*, another of the Underwriters (who, as Mr. *Innes* was not ſatisfied with the firſt Verdict, permitted the latter to make Uſe of his Name to try the Merits of the Caſe a ſecond Time) the *Manner* of making up this Charge eſtabliſhes a Precedent for future Caſes of the like Nature.

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By WYNDHAM BEAWES, Eſq;
His Majeſty's Conſul at Seville and St. Lucar.

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OF

CHAP. I.

Of Bills of Exchange.

SECT. I.

Of the Nature and Freedom of Trade and Traffic, or Exchange.

1. AS no one Man can turn his own Induſtry to all the ſeveral Varieties that are neceſſary for a convenient Livelihood, but muſt, by a careful and laborious Diligence in ſome one Affair, or particular Branch of Buſineſs, acquire more than is neceſſary for his own Subſiſtence; as the Neceſſities and Materials of Life are various, and not all of them to be acquired by the Labour of any one particular Perſon; and as they are likewiſe periſhable, and not long to be preſerved without Alteration and Corruption; hence aroſe the Neceſſity of bartering and exchanging; that one Man ſhould employ his Time in one Art and Means of living; that what was redundant from ſuch his Art ſhould be communicated to others, in Exchange for the other Neceſſaries of Life, which he wanted, and wherewith they abounded; and that periſhable Materials ſhould be exchanged for thoſe more permanent and durable, or to receive of the ſame hereafter, when the Party became old and unfit for Labour. And as this Neceſſity of Permutation and Exchange begat at firſt the Notion of Merchandize; ſo when the ſeveral Ornaments of

Life were brought to Light, the Ways of Traffic and Exchange grew more extended and enlarged; and civilized States brought from other *(a)* Countries such Materials as they themselves wanted, and which were the Produce of those Places; and such as tended to enrich and aggrandize themselves, and were necessary to a polite and adorned Way of Living. 3 *New Ab. Law*, 583.

2. Hence it is, that in every civilized and well regulated State, and especially in an Island, Trade and Merchandize should be protected and encouraged, and that it should be free to all Persons; as every one who would live is under a kind of natural Necessity to labour, in which he has a Property, being the Means of his Livelihood; which to hinder him from, would be as cruel, as to deprive him even of Life: And therefore it seems agreed, from the fundamental Principles of our Government, that the King cannot, regularly, prohibit Trade, nor lay a Penny Imposition on it; but that every Man may use the Sea, and trade with other Nations, as freely as he may use the Air. *Ibid.*

3. And this freedom of Trade is not only allowed by the Common Law, but hath also been asserted and established by the Care and Wisdom of our Princes and Parliaments: And to this Purpose it is provided by *Magna Charta*, cap. 30. "*That (b) all Merchants, (if (c) they are not* openly *prohibited before) shall have their safe and sure Conduct to depart, come and carry, buy and sell, without any Manner of evil Tolls by the old and rightful Customs*, &c." *Id.* 584.

(a) It is foreign Trade that renders us rich, honourable, and great; that gives us a Name and Esteem in the World; that makes us Masters of the Treasures of other Nations and Countries, and supports and maintains our Ships and Seamen, the Walls and Bulwarks of our Country. See *Molloy de Jure Maritimo, Lib. 2. Cap. 7. §. 7.*

(b) This respects Aliens only; which strongly proves, that the *English* had this Liberty before: Otherwise they would not have extended it to Aliens, and left the *English* without it, 2 *Inst.* 57.

(c) This Prohibition must be by Act of Parliament, because it concerns the whole Realm, which is implied in the Word *openly*, and relates to Aliens only, 2 *Inst.* 57.

4. But

4. But notwithſtanding this Freedom of Trade, yet it ſeems *(d)* agreed, that the King may in Time of War, and for the public Service and Safety, lay an Embargo on Ships, and employ the Ships of his Subjects in the public Service: But this, ſays Lord Chief Juſtice *Holt*, ought to be upon great Emergencies and for the public Benefit, and not for the private Intereſt of any Perſon or Society. Alſo it ſeems agreed, that the King may, by his Writ of *(e) Ne exeat Regno*, reſtrain a Subject from going out of the Realm; and may, by his *(f)* Privy Seal, command any of his Subjects to return out of a foreign Nation on pain of having their Lands ſeized, *&c.* It hath likewiſe been holden, that the King, by his *(g)* Prerogative, might reſtrain his Subjects from trading with an *(h)* Infidel Nation, State or People, without his Licence; and on

(d) Skin. 335. 3 Levin. 352. 4 Mod. 176. Sands, v. Child.

(e) This Writ is properly granted upon ſome Matter of State; and of late extended to confine a Perſon to abide the Juſtice of Courts here; not to reſtrain a Perſon from a lawful Act, ſuch as Merchandize: Nor is it ever univerſal, but always particular, and granted upon Oath made concerning a particular Perſon, Skin. 136. 3 Mod. 127. 4 Mod. 179.

(f) For this ſee Dyer 128. pl. 61. Lane 42. 3 Mod. 127.

(g) In Sir *John Davis*'s Rep. 9. it is ſaid, that the Reaſon of the King's being intitled to Cuſtoms was his permitting Merchants to go beyond Sea when he could prohibit them. —— But in F. N. B. it is ſaid, that by the Common Law every Subject may go out of the Kingdom for Merchandize or Travel, or other Cauſe, as he pleaſes, without Leave.

(h) In *Grotius de bello & pace*, lib. 2. cap. 15. parag. 11. it is ſaid that a Government ſhould take care that there be no Infection by Correſpondence with Infidels; and in *Calvin*'s Caſe, 7 Co. 6. 17. Infidels are called *perpetui inimici Regis*; and in 2 Brownl. 296. it is ſaid by my Lord *Coke*, that no Subject of the King may trade with any Realm of Infidels without the King's Licence, that he might not, ſays he, relinquiſh the Catholic Faith, and adhere to Infideliſm; and adds, that he had ſeen ſuch a Licence in the Time of Ed. 3. —— Others ſay, that *Turks* and Infidels are not *perpetui inimici*, nor is there any perpetual Enmity between them and us; for tho' there be a Difference between our Religion and theirs, that does not oblige us to be Enemies to their Perſons, Salk. 46. —— That they cannot be converted, if Converſation with them

on this Foundation principally it was held, in the Caſe of *(i) Sands* and the *Eaſt India Company*, that the King's Charter, which gave them an excluſive Right to trade in the *Eaſt Indies*, was good; but this Doctrine ſeems now exploded, and that nothing can exclude the Subject from Trade, but an Act of Parliament. 3 *New Ab. Law*, 584.

5. And as the Freedom of Trade and Merchandize is ſupported by the Common Law; ſo likewiſe are there certain Cuſtoms and Privileges annexed thereto by the Common Law; *(k)* of which the Judges will take notice *ex Officio*. But theſe Privileges are not to be extended to every one who buys or ſells; nor is he from thence, ſays *Molloy*, to be denominated a *(l)* Merchant, which Appellation peculiarly belongs to him who traffics in the Way of Commerce by Importation or Exportation; or otherwiſe, in the way of Emption, Vendition, Barter, Permutation or Exchange; and who makes it his Living to buy and ſell, and that by a continued Aſſiduity, or frequent Negotiation in the Myſtery of Merchandizing: But

them is not lawful, Holt, C. J. to which the reſt of the Court ſeemed to agree, Skin. 336, and that it is a Diſparagement to the Chriſtian Religion to think that they ſhould rather be converted by Infidels, than Infidels by them, 3 Lev. 354.

(i) Raym. 488. 1 Vern. 127. 2 Chan. Cas. 165. Skin. 91, 132, 197, 223.

(k) 2 Rol. Rep. 113. Yelv. 135. 3 Mod. 226. The Cuſtom of Merchants is Part of the Common Law of this Kingdom, of which the Judges ought to take notice; and if any Doubt ariſe to them about their Cuſtom, they may ſend to the Merchants to know their Cuſtom, as they may ſend for the Civilians to know their Law, Winch. 24. — may direct an Iſſue for Trial of a Cuſtom amongſt Merchants, Hard. 486.

(l) There are four Sorts of Merchants, *viz.* Merchants Adventurers, Merchants Dormants, Merchants Travelling, and Merchants Reſidents, 2 Brownl. 99. *per Coke*. — But it is ſaid that a Merchant includes all Sorts of Traders as well and as properly as Merchants Adventurers, and that a Merchant Taylor is a common Term, 2 Salk. 445. *per Holt*. He that continually deals in buying and ſelling Commodities, or by way of Permutation of Ware both at Home and Abroad, is a Merchant. *Malynes's Lex Mercatoria*, p. 5.

thoſe

thoſe who buy Goods to reduce them by their own Art or Induſtry into other Forms than formerly they were of, are properly called *Artificers*, not *Merchants*. 3 *New Ab. Law*, 584.

SECT. II.

Of the Antiquity, and various Kinds, of Exchange.

1. THE Exchange of Money is of great Antiquity, as appears as well from the *Hebrew* Cuſtoms as thoſe of the *Romans*.

Upon the firſt Day of the Month * *Adar*, Proclamation was made throughout all *Iſrael*, that the People ſhould provide their half † *Shekels*, which were yearly paid towards the Service of the Temple, according to the Commandment of God. On the 25th of *Adar* they brought Tables into the Temple, that is, into the outward Court where the People ſtood, *Exod.* xxx. 31. On theſe lay the leſſer Coins, which were to furniſh thoſe who wanted half *Shekels* for their Offerings, or who wanted leſs Pieces of Money in their Payment for Oxen, Sheep, Doves, *&c.* which ſtood there ready in the ſame Court to be ſold for Sacrifices: but this Supply, and furniſhing the People from theſe Tables was not without an Exchange for other Money, or other Things in lieu of Money, and that at an Advantage. Hence alſo thoſe who ſat at the Tables were called *Bankers*, or Maſters of the Exchange. *Molloy*, Lib. 2. C. 10. §. 1.

2. By the *Romans* it is ſuppoſed to have been in Uſe upwards of two thouſand Years, Money being then made out of Gold and Silver, to avoid the Carriage of Merchandizes in Barter from one Country to another. So other Nations, imitating the *Jews* and *Romans*, erected Mints, and coined Monies; upon which the Exchange by Bills was deviſed, not only to avoid the

* *Adar* anſwers to our *February*.

† *Shekel* is an antient *Jewiſh* Coin, equal in Value to about 2*s.* 6*d.* Sterling.

Danger of the Adventure of Monies, but its troublesome Carriage. *Molloy*, Lib. 2. C. 10. §. 2.

3. Thus States having, by their sovereign Authorities, coined Monies, caused them to appoint a certain Exchange for Permutation of the various Coins of several Countries, without transporting of the Coin, but giving *par pro part*, or Value for Value, with a certain Allowance to be made those Exchangers for accommodating the Merchants. *Molloy*, Lib. 2. C. 10. §. 3.

4. As Commerce branched into various Shapes, so did Exchange; but was generally reducible to four Species, *viz. Common Exchange*, *Real Exchange*, *Dry Exchange*, and *Fictitious Exchange*. *Molloy*, Lib. 2. Cap. 10. §. 4.

5. Those who practised the *Common Exchange* were constituted by the several Kings, who, having received Monies in *England*, would remit by Exchange the like Sum, to be paid in another Kingdom. *Edward* III. to ascertain the Exchange, caused Tables to be set up in most of the general Marts or Ports of *England*, declaring the Values of the foreign Coins of those Countries with which his Subjects carried on Commerce, and what Allowances were to be made for having Monies to be remitted to such Countries, *Molloy*, Lib. 2. C. 10. §. 4.

6. *Real Exchange* was no more but upon Payment of Monies here in *England*, to be repaid the just Value in Money in another Country, according to the Price agreed on between the Officer and Deliverer, to allow or pay, for the Exchange of the Money, and the Loss of Time. *Molloy*, Lib. 2. Cap. 10. §. 5.

7. *Dry Exchange* is, when a Merchant hath Occasion for 500l. suppose for a certain Time, and would willingly pay Interest for the same: The Banker being desirous to take more than Legal Interest, and yet to avoid the Statute offers 500l. by Exchange for *Calais*, or any other Place to which the Merchant agrees; but the Merchant having no Correspondent there, the Banker desires him to draw his Bill to be paid at double or treble Usance at *Calais*, by any feigned

feigned Perſon, at the Price of Exchange then current. Accordingly, the Merchant makes the Bill, and the Banker pays the Monies; which Bill the Banker remits to ſome Friend of his to procure a Proteſt from *Calais* for Non-acceptance, with the Exchange of the Money from *Calais* to *London*; all which, with Coſts, the Merchant is to repay to the Banker; and ſometimes they have been ſo conſcientious as not to make above 30 *l. per cent.* by theſe Artifices. This Kind of Uſury was firſt introduced into *England* by the *Jews*. See Co. 2 Inſt. fo. 506. *Molloy*, Lib. 2. Cap. 10. §. 6.

8. *Fictitious Exchange* is when a Merchant hath Occaſion for Goods to freight out his Ship, but cannot well ſpare the Money. The Owner of the Goods intimates, that he muſt have ready Money: the Buyer knowing his Drift, it is agreed that the Seller ſhall take up the Monies by Exchange for *Venice*, or any other Parts; but then the Merchant muſt pay for Exchange and Re-exchange. *Molloy*, Lib. 2. Cap. 10. §. 7.

Theſe two laſt Ways of oppreſſing the generous Merchant were afterwards prohibited by 3 & 4 *Hen.* VII.

9. The juſt and true Exchange for Money by Bills is *par pro pari*, according to Value for Value; which is grounded on the Weight and Fineneſs of Monies, according to their ſeveral Standards, proportionable to their Valuation; which, being truly and juſtly made, aſcertains and reduces the Price of Exchange to a Sum certain, for the Exchange of Money to any Nation or Country whatſoever. *Molloy*, Lib. 2. Cap. 10. §. 8.

SECT. III.

Of foreign Bills.

1. BILL of Exchange is a Piece of Paper commonly long and narrow, on which is wrote a ſhort Order, given by a Banker, Merchant, Trader, or other Perſon, for paying to ſuch a Perſon, or to his Order, and alſo, in ſome Countries, to the Bearer in a diſtant Place, a Sum of Money equivalent to that which ſuch a Banker, Merchant, or Trader has received in his Dwelling Place. *Dict. Tr.* and *Com.* 253. *Savary's Dict. Tit. Lettre de Change.*

2. The Cuſtom of Merchants, in Relation to foreign Bills of Exchange *, ſeems to have prevailed Time out of Mind; and was at firſt introduced for the expedition of Trade and its Safety, and to prevent the Exportation of Money out of the Realm; and, therefore, hath been always countenanced and encouraged, as a Matter of great Eaſe and Advantage to Trade, and is now become Part of the Law of the Land; and, as Bills of Exchange are eſtabliſhed merely by the Cuſtom of Merchants and for their Benefit; ſo their Rules and Cuſtoms are allowed to preſcribe their Form and ſeveral Properties, as to their creating Engagements on the Parties that are concerned in them. 3 *New Abr. Law*, 602.

3. By this Cuſtom, if a Merchant abroad draw a Bill on a Merchant here, or *vice verſa*, requeſting him to pay a certain Sum of Money, and the Drawer ſets his Name to it; this amounts to a Promiſe to pay, and ſubjects him, though but a Collateral Engagement, to an Action on the Non-payment. 1 *Rol. Abr.* 6. *Cro. Jac.* 306. *Cro. Car.* 301.

4. A Writ of Error was brought in the *Exchequer* Chamber upon a Judgment in B. R. where the Plaintiff declared, in Caſe, on the Cuſtom of Merchants, That, if any Merchant, or other trading Perſon, make and direct any Bill of Exchange to another,

* See *Malynes's Lex Mercatoria*, 269.

payable

payable to a Merchant or any other trading Perſon, and the Bill be tendered, and, for Want of Acceptance, proteſted; in ſuch Caſe the Drawer, by the Cuſtom, is chargeable to pay, *&c.*——That the Defendant at *Paris*, in *France*, did draw a Bill on his Father here in *London*, payable to the Plantiff, and the ſame was preſented but refuſed; and he, according to Cuſtom, proteſted the Bill, whereby the Defendant became chargeable, and, in Conſideration of the Premiſes, did aſſume, *&c.* To this the Defendant pleaded, that he was a Gentleman, the Son and Heir of Dr. *Thomas Witherley*, and at the Time of drawing the Bill, was a Traveller, and at *Paris*; and that he was no Merchant, nor Trader, nor did ever deal as ſuch, and he was then at *Paris* as a Gentleman and Traveller, as aforeſaid, *abſque hoc*, and denies that he is, or ever was a Merchant, *&c.* The Plantiff demurs to the Defendant's Plea, and ſhews, for Cauſe, that it amounts to the general Iſſue, is double and uncertain, *&c.*

Holt, C. I. It is not every Plea that amounts to the general Iſſue that is ill; and the Cuſtom is the Foundation, and the Plea is an Anſwer to that, and therefore enough: But this drawing a Bill muſt ſurely make him a Trader for that Purpoſe: for we all have Bills directed to us and payable to us, which muſt be all voidable, if the negotiating a Bill will not oblige the Drawer of it. The Judgment for the Defendant was reverſed. *Holt's Rep.* 113. 2. *Ven.* 292, 295. *Sarſfield* v. *Witherley*, 1 *W & M.* 1 *Show*, 125. *Comb.* 45.

Carth. 82. S. C. Says it was agreed by all that the Judgment ſhould be reverſed accordingly; and that this was, upon Conſideration had of the Inconveniencies which might enſue, and the Suſpicion which might encreaſe among foreign Merchants upon Bills of Exchange, if Perſons who took upon themſelves to draw ſuch Bills, ſhould not be liable to the Payment thereof. See 1 *Salk.* 125. *Hodges* and *Steward*; where it is determined, that the Drawing of a Bill makes a Merchant for that Purpoſe.

5. And

5. And if the Drawee, or he on whom the Bill is drawn, refuſe to accept it, or having accepted it, refuſe to pay it, the Payee, or he in whoſe Favour it is drawn, may proteſt it, and ſhall recover againſt the Drawee, not only the principal Sum, but likewiſe all Intereſt, Coſts and Damages, by Reaſon of the Proteſt or Refuſal of Acceptance, or Payment of the Money. *Cro. Car.* 301.

6. The Uſe of the Proteſt is this, That it ſignifies to the Drawer, that the Party upon whom he drew his Bill was unwilling, not to be found, or Inſolvent, and to let him have timely Notice of the ſame, and to enable the Party to recover againſt the Drawer; for, if one draws a Bill from *France* upon a Perſon in *England*, who accepts and fails, or becomes inſolvent at the Time of Payment, if there be not a Proteſt and timely Notice ſent to the Drawer there, it will be difficult to recover the Money. *Molloy*, Book ii. Chap. 10. §. 31.

7. A Proteſt is no more but to ſubject the Drawer to anſwer in Caſe of Non-acceptance or Non-payment; nor does the ſame diſcharge the Party Acceptor if once accepted; for the Payee, or Perſon to whom payable, hath now two Remedies, one againſt the Drawer, and the other againſt the Acceptor. *Molloy*, Book ii. Chap. 10. §. 17.———A Proteſt on a foreign Bill is Part of the Cuſtom; *per Holt. L. Raym.* 993. *Borough* and *Perkins*, S. C. in *Salk.* 131, where it is ſaid to be Part of its Conſtitution.

8. In Caſe of foreign Bills of Exchange, the Cuſtom is, that three Days are allowed for Payment of them; and if they are not paid upon the laſt of the ſaid three Days, the Party ought immediately to proteſt the Bill and return it, and by this Means the Drawer will be charged: but if he does not proteſt it the laſt of the three Days, which are called the Days of Grace; there, although he upon whom the Bill is drawn fails, the Drawer will not be chargeable; for it ſhall be reckoned his folly that he did not proteſt: But, if it happens that the laſt of the ſaid three Days is a *Sunday*, or great Holyday, as *Chriſtmas-day*, *&c.* upon which

which no Money uſed to be paid, there the Party ought to demand the Money upon the ſecond Day; and if it is not paid, he ought to proteſt the Bill the ſaid ſecond Day; otherwiſe it will be at his own Peril, and the Drawer will not be chargeable. Merchants in Evidence at a Trial at *Guildhall*, *Trin.* 7. W. 3. before *Holt*, Chief-Juſtice, ſwore the Cuſtom of Merchants to be ſuch, which was approved by *Holt*, Chief-Juſtice*. *L. Raym.* 743. *Taſſel* v. *Lewis.*

9. But tho' the Cuſtom of Merchants, in Relation to Bills of Exchange, be eſtabliſhed by the Common Law, and ſuch Bills, being Securities for Money, are of great Credit among them; yet they are not allowed to be Securities of as high a Nature as Bonds or Specialties; and therefore it hath been adjudged, that a Bill of Exchange is within the ‡ Statute of Limitations, and muſt be ſued for within ſix Years after it becomes payable. 3 *New Ab.* 602. *Carth.* 3. *Renew* v. *Axton.*

10. So, if a Merchant in *London* draw a Bill of Exchange on his Correſpondent in *Newcaſtle*, in favour of *J. S.* and the Bill is refuſed, and *J. S.* dies inteſtate, his Adminiſtrator, on Letters of Adminiſtration taken out in *Durham*, cannot bring an Action on the Cuſtom of Merchants, againſt the Drawer, and lay the ſame in *London*; for that a Bill of Exchange is not equal to a Bond or Specialty (which are the deceaſed's Goods, where they happen to be at his Death)

* Merchants generally allow three Days after a Bill becomes due for the Payment; and for Non-Payment within three Days Proteſt is made, but is not ſent away till the next Poſt after the Time of Payment is expired. If *Saturday* is the third Day no Proteſt is made till *Monday*. Molloy, B. 2. C. 10. §. 30. This is a general Rule, namely, that according to the Cuſtom of Merchants in *London*, Proteſt ought to be made for Non-Payment within three Days after the Bill falls due, and the Proteſt ought to be ſent away by the firſt Poſt next after the Time of Payment is expired, be it for what Part ſoever. Marius, P. 97.

‡ Nor are Bills of Exchange, for Value received, ſuch Matters of Account, as are intended by the Exception in the Statute concerning Merchants Accounts, Carth. 226.

but

but is a ſimple Contract, which follows the Perſon of the Debtor, and makes *bona Notabilia** where the Debtor reſides; and therefore Adminiſtration ought to have been taken out in *London*. 3 *New Abr.* 603. *Carth.* 373. *Yeoman* v. *Bradſhaw*. *Comb* 392. S. C.

11. Alſo this Cuſtom ſhall not prevail againſt the Privilege of Infants †, ſo as to bind them; and accordingly it hath been adjudged, that if an Infant draw a Bill of Exchange, Infancy is a good Plea in Bar to an Action brought againſt him. 3 *New Abr.* 603. *Carth.* 160. *Williams* v. *Harriſon*.

12. Bills of Exchange are uſually drawn payable on Sight, ſo many Days after Date, or at ſingle, double or treble Uſance ‡; and it is frequent to draw two or three for the ſame Sum, and of the ſame Date, for fear of Loſs or Miſcarriage, which carry a ‖ Condition with them that only one ſhall be paid. 3 *New Abr.* 603. *Molloy*, B. ii. Chap. 10. §. 10.

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* *Bona Notabilia* are ſuch Goods as a Perſon dying has in another Dioceſe than that wherein he dies, amounting to the Value of 5 *l.* at leaſt; in which Caſe the Will of the Deceaſed muſt be proved, or Adminiſtration granted, in the Court of the Archbiſhop of the Province; unleſs, by Compoſition or Cuſtom, any Dioceſes are authorized to do it, when rated at a greater Sum. And in the City of *London bona Notabilia* are 10 *l.* But if a Perſon happens to die out of the Dioceſe in which he lived, on a Journey, what he has about him ſhall not be accounted *bona Notabilia*. Can. 92. Perk. 489. 4 Inſt. 335. 5 Rep. 30.

† Infant here ſignifies a Perſon under the Age of 21.

‡ An Uſance is ſaid to be regularly a Month. Molloy, B. 2. Chap. 10. §. 11. 1 Show. 317. But it varies according to the Cuſtom of particular Countries; and therefore where the Plaintiff declared on a Bill of Exchange, drawn at *Amſterdam* payable at *London* at two Uſances, and did not ſhow what the two Uſances were, Judgment was given for the Defendant; for the Court could not take Notice of foreign Uſances, which varied: being longer in one Place than in another. 1 Salk. 131. Buckley *v.* Cambell.

‖ Therefore, if there are three Bills for the ſame Sum, and an Action is brought on one of them, and the Plaintiff declare, that the Money *in billa prædicta mentionat*, is not paid; this is ſufficient after Verdict, without averring, that it was not paid on the other Bills; becauſe the Sum is the ſame in all the Bills. Carth. 510. 1 Salk. 130. Eaſt *v.* Eſſington, adjudged. L. Raym. 810. S. C.

13. The

13. The Commerce of changing Money for Money, is carried on two ways. The firſt is, by changing the Species of Money for others of the ſame Value, ſuch as Pieces of Silver for Gold, and the Coin of one Country for that of another. The ſecond is, where one gives Money to a Banker, or other Perſon, in one Place, that he may remit it to another Place; whether it be within or without the Kingdom. And it is only this ſecond Kind of Commerce that we ſhall treat of here. The Commerce of remitting Money from one Place to another, is carried on by the Means of Bills of Exchange: And in order to the right underſtanding of the Nature and Rules of this Matter, we muſt conſider in this Commerce, the ſeveral Perſons in it, and what paſſes with regard to every one of them.

There are commonly in the Commerce of Bills of Exchange, three Perſons concerned, whom we ought to diſtinguiſh. There is he who wants to have his Money remitted from one Place to another: Then he who receives it, as the Banker or Drawer does, who undertakes to remit the Money: And thirdly, there is the Perſon who delivers the Money in the Place to which it is to be remitted, ſuch as the Banker or Drawer's Correſpondent. And there is often a fourth Perſon concerned, viz. he to whom the Perſon who paid in the Money ſends his Order to receive it: And this fourth Perſon may likewiſe transfer his Right to others, to whom he gives his Order. It may alſo ſo happen that there are only two Perſons concerned, he who gives the Money, and he who receiving it in one Place delivers it back in another Place, to the ſame Perſon who gave it him on that Condition. We muſt in the next Place conſider the different Covenants that paſs between thoſe Perſons.

The Covenant which paſſes between the Perſon who gives the Money, and him who undertakes to remit it to another Place, hath in it ſome particular Characters which diſtinguiſh it from all other Kinds of

of Covenants that may ſeem to have ſome reſemblance with it. It is not a Sale; for no Body ſells or buys in it: and in the Contract of Sale there is a Seller, who gives ſomething elſe than Money, as there is a Buyer who gives nothing but Money. It is not an Exchange; for thoſe who barter or exchange any Thing, give ſomething different from what they receive: And each Party takes for his own Uſe a Thing which he ſtands in need of, and gives away another Thing which he can ſpare; but in the Commerce of Bills of Exchange, he who gives his Money takes nothing in Counterchange, and does not give one Thing, that he may receive another of a different Kind; ſince he who received the Money may reſtore the ſame individual Species which he received. It is not a *Depoſitum*; for he who has received the Money remains anſwerable for it, altho' it ſhould be loſt by an unforeſeen Accident. It is not a Loan; becauſe he who receives the Money does not borrow it. It would be a letting and hiring, if he who receives the Money did nothing elſe but barely carry it to the Place whether it ought to be remitted, having a certain Allowance for carrying it, as is uſual for Meſſengers, Carriers, and Maſters of Stage-Coaches to do, who take the Charge of a Bag of Money, to carry it from one Place to another, without anſwering for Accidents;—but when he who receives the Money engages himſelf by a Bill of Exchange to remit it to another Place; the Money remains in his Hands, at his Peril, and is no longer the Money of the Perſon who gave it. Thus, it is not a letting and hiring; and conſequently, it is a Covenant, different from all the others; which conſiſts in the Commerce of tranſmitting Money belonging to a Perſon, from one Place to another: And which is diſtinguiſhed from all theſe other Kinds of Covenants, by the Characters which we have juſt now remarked.

The Covenant that paſſes between the Perſon who has received the Money, whether Banker or other Perſon, and him to whom he gives Order to pay it in

in another Place, is a Partnerſhip, if they are Partners and Correſpondents with one another: Or it is a Procuration or Commiſſion, if the Correſpondent be only the Factor or Agent of the Perſon who has received the Money.——

The Covenant between the Perſon who has paid the Money, and him to whom he gives his Order to receive it, is either an Aſſignment, if he ſubſtitutes him in his Place, and transfers his Right to him; or it is a Procuration, if he gives him barely the Power to receive the Money for his Uſe.——

There is laſtly another Covenant which paſſes between him who paid down the Money, and the Perſon who is ordered to anſwer the Bill of Exchange, when he accepts the Bill. And this Covenant is the ſame with that which paſſed between him who paid in the Money, and him who received it; for it only adds the Obligation of him who accepts the Bill, to that of the Perſon who drew it: And it obliges the Perſon who accepts the Bill to pay it on the Day, and in the Place ſpecified in the Bill. Domat. Vol. 1. P. 231.

SECT. IV.

Of Inland Bills.

1. INLAND Bills of Exchange are thoſe drawn by one Merchant reſiding in one Part of the Kingdom, on another reſiding in ſome City or Town within the ſame Kingdom; and theſe alſo being found uſeful to Trade and Commerce, have been eſtabliſhed on the ſame Foot with foreign Bills; but at Common Law they differed from them in this, that there was no Cuſtom of proteſting them, ſo as to ſubject the Drawer to Intereſt and Damages in Caſe of Non-Payment, as there was on foreign Bills. 3 *New Abr.* 603. 1. *Salk.* 131. *Borough* v. *Perkins.*

2. To remedy this Inconveniency, by the 9 & 10 W. 3. Cap. 17. reciting, that great Damages and other

other Inconveniencies do frequently happen in the Courſe of Trade and Commerce, by Reaſon of Delays of Payment and other Neglects on Inland Bills of Exchange, it is enacted, " That all and every " Bill or Bills of Exchange, drawn in, or dated at " and from any trading City or Town, or any other " Place in the Kingdom of *England*, Dominion of " *Wales*, or Town of *Berwick* upon *Tweed*, of the " Sum of 5 *l.* or upwards, upon any Perſon or Perſons of or in *London*, or any other trading City " or Town, or any other Place (in which ſaid Bill " or Bills of Exchange ſhall be acknowledged and " expreſſed the ſaid Value to be received) and is " and ſhall be drawn payable at a certain Number of " Days, Weeks or Months after Date thereof; that " from and after Preſentation and Acceptance of the " ſaid Bill or Bills of Exchange (which Acceptance " ſhall be by the under-writing the ſame under the " Party's Hand ſo accepting) and after the Expiration of three Days after the ſaid Bill or Bills ſhall " become due, the Party to whom the ſaid Bill or " Bills are made payable, his Servant, Agent or Aſſigns may, and ſhall cauſe the ſaid Bill or Bills to " be proteſted by a Notary Public, and in Default " of ſuch Notary Public, by any other ſubſtantial " Perſon of the City, Town or Place, in the Preſence of two or more credible Witneſſes; Refuſal " or Neglect being firſt made of due Payment of the " ſame; which Proteſt ſhall be made and written " under a fair written Copy of the ſaid Bill of Exchange, in the Words or Form following." *Know all Men that I* A. B. *on the Day of at the uſual Place of Abode of the ſaid have demanded Payment of the Bill of which the above is the Copy, which the ſaid did not pay; wherefore I the ſaid do hereby Proteſt the ſaid Bill. Dated at this Day of*

" Which Proteſt ſo made as aforeſaid, ſhall " within Fourteen Days after making thereof be ſent " or otherwiſe due Notice ſhall be given thereof to

" the

" the Party from whom the ſaid Bill or Bills were " received, who is, upon producing ſuch Proteſt, to " repay the ſaid Bill or Bills, together with all In- " tereſt and Charges from the Day ſuch Bill or Bills " were proteſted, for which Proteſt ſhall be paid a " Sum not exceeding the Sum of Six-Pence; and in " Default or Neglect of ſuch Proteſt made and ſent, " or due Notice given within the Days before limited, " the Perſon ſo failing or neglecting thereof, is and " ſhall be liable to all Coſts, Damages *, and Inte- " reſt, which do and ſhall accrue thereby.

" Provided, nevertheleſs, that in caſe any ſuch in- " land Bill or Bills of Exchange ſhall happen to be " loſt or miſcarried within the Time before limited " for Payment of the ſame, then the Drawer of the " ſaid Bill or Bills is, and ſhall be obliged to give an- " other Bill or Bills of the ſame Tenor with thoſe " firſt given; the Perſon or Perſons, to whom they " are and ſhall be ſo delivered, giving Security, if " demanded, to the ſaid Drawer, to indemnify him " againſt all Perſons whatſoever, in caſe the ſaid Bill " or Bills of Exchange, ſo alledged to be loſt or miſ- " carried, ſhall be found again."

3. But this Statute was defective, becauſe it could not operate, unleſs the Party, on whom the Bill was drawn, accepted it by underwriting the ſame, which few or none cared to do. 3 *New Abr.* 604.

* In inland as well as foreign Bills of Exchange, the Perſon to whom it is payable muſt give convenient Notice of Non-Payment to the Drawer; for if by his Delay the Drawer receive Prejudice, the Plaintiff ſhall recover: A Proteſt on a foreign Bill was Part of its Conſtitution; on inland Bills a Proteſt is neceſſary by this Statute: but was not at Common Law; but the Statute does not take away the Plaintiff's Action for Want of a Proteſt, nor does it make ſuch Want a Bar to the Plaintiff's Action; but this Statute ſeems only in Caſe there be no Proteſt, to deprive the Plaintiff of *Damages* or *Intereſt*, and to give the Drawer a Remedy againſt him for Damages if he makes no Proteſt. Per. Holt, C. J. 1 Salk. 131. Borough *v.* Perkins. L. Raym. 993. S. C. 6 Mod. 80. S. C. and Holt ſaid that the Act is very obſcurely and doubtfully penned, and that they ought not by Conſtruction upon ſuch an Act to take away a Man's Right; to which the whole Court agreed. See this Caſe at large, P. 19. Parag. 5.

4. To remedy which Inconveniency, by the 3 & 4 *Anne*, cap. 9. it is enacted, " That in caſe, upon " preſenting any ſuch Bill or Bills of Exchange, the " Party, or Parties, on whom the ſame ſhall be " drawn, ſhall refuſe to accept the ſame by under- " writing the ſame as aforeſaid, the Party to whom " the ſaid Bill or Bills are made payable, his Servant, " Agent or Aſſigns, may, and ſhall cauſe the ſaid " Bill or Bills to be proteſted for Non-acceptance, as " in caſe of foreign Bills of Exchange, any Thing in " the ſaid Act or any other Law to the contrary " notwithſtanding; for which Proteſt there ſhall be " paid two Shillings and no more.

" Provided, that no Acceptance of any ſuch In- " land Bill of Exchange ſhall be ſufficient to charge " any Perſon whatſoever, unleſs the ſame be under- " written, or indorſed in Writing thereupon; and if " ſuch Bill be not accepted by ſuch Underwriting or " Indorſement in Writing, no Drawer of any ſuch " Inland Bill ſhall be liable to pay any Coſts, Dama- " ges, or Intereſt thereupon, unleſs ſuch Proteſt be " made for Non-acceptance thereof; and within " fourteen Days after ſuch Proteſt the ſame be ſent, " or otherwiſe Notice thereof be given to the Party " from whom the Bill was received, or left in Wri- " ting at the Place of his or her uſual Abode; and if " ſuch Bill be accepted, and not paid before the Ex- " piration of three Days after the ſaid Bill ſhall be- " come due and payable, then no Drawer of ſuch " Bill ſhall be compellable to pay any Coſts, Dama- " ges, or Intereſt thereupon, unleſs a Proteſt be made " and ſent, or Notice thereof be given in Manner and " Form above mentioned: Nevertheleſs, every Draw- " er of ſuch Bill ſhall be liable to make Payment of " Coſts, Damages, and Intereſt upon ſuch Inland " Bill, if any one Proteſt be made for Non-accept- " ance or Non-payment thereof, and Notice thereof " be ſent, given, or left, as aforeſaid.

" Provided, that no ſuch Proteſt ſhall be neceſſary, " either for Non-acceptance or Non-payment of any

" Inland

" Inland Bill of Exchange, unleſs the Value be ac-
" knowledged and expreſſed on ſuch Bill to be receiv-
" ed; and unleſs ſuch Bill be drawn for the Payment
" of 20 *l.* or upwards, and that the Proteſt hereby re-
" quired for Non-acceptance ſhall be made by ſuch
" Perſons as are appointed by the above Statute, 9
" and 10 *W.* 3.

" And it is further enacted by the ſaid Stat. 3 and
" 4 *Anne*, that if any Perſon doth accept any ſuch
" Bill of Exchange, for and in Satisfaction of any
" former Debt or Sum of Money formerly due to
" him, the ſame ſhall be accounted and eſteemed a
" full and compleat Payment of ſuch Debt; if ſuch
" Perſon accepting of any ſuch Bill for his Debt
" doth not take his due Courſe to obtain Payment
" thereof, by endeavouring to get the ſame accepted
" and paid and make his Proteſt as aforeſaid, either
" for Non-Acceptance or for Non-Payment thereof.

" Provided that nothing herein contained ſhall
" extend to diſcharge any Remedy that any Perſon
" may have againſt the Drawer, Acceptor or Indorſer
" of ſuch Bill."

5. A Writ of Error was brought on a Judgment by *nil dicit* in an Action againſt the Drawer of an Inland Bill of Exchange, and it was objected that ſince the Act of 9 W. 3. no Damage ſhall be recovered againſt the Drawer upon a Bill of Exchange, without a Proteſt, and therefore the Action lies not, there being no Proteſt.

But *Per Holt*, C. J. the Statute never intended to deſtroy the Action for want of a Proteſt, but only to deprive the Party of recovering Intereſt and Coſt upon an Inland Bill againſt the Drawer, without Notice of Non-Payment by Proteſt: For before the Statute there was this Difference between Foreign and Inland Bills of Exchange; if a Bill was foreign, one could not reſort to the Drawer for Non-Acceptance or Non-Payment without a Proteſt, and reaſonable Notice thereof. But in Caſe of an inland Bill, there was no Occaſion for a Proteſt; but if any Prejudice happened

to the *Drawer*, by the Non-Payment of the Drawee, and that for Want of Notice of Non-Payment, which he to whom the Bill is made ought to give, the Drawer was not liable; and the Word * *Damages* in the Statute, was meant only of Damages that the Party is at by being longer out of his Money by the Non-Payment of the Drawer, than the Tenor of the Bill purported, and not of Damages for the original Debt: And the Proteſt was ordered for the Benefit of the Drawer; for if any Damages accrue to the Drawer for want of a Proteſt, they ſhall be borne by him to whom the Bill is made; and if no Damage accrue to him, then there is no Harm done him, and a Proteſt is only to give a formal Notice, that the Bill is not accepted, or is accepted and not paid; and if in ſuch Caſe the Damage amount to the Value of the Bill, there ſhall be no Recovery, but otherwiſe he ought not to loſe his Debt; but that ought either to appear by Evidence upon *non Aſſumpſit*, or by ſpecial pleading; and the Act is very obſcurely and doubtfully penned, and we ought not by Conſtruction upon ſuch an Act to take away a Man's Right. And the Judgment was affirmed *per totam Curiam.* 1 *Salk.* 131. *Borough* v. *Perkins.* *L. Raym.* 993. *S. C.* 6 *Mod.* 80. *S. C.* See P. 27. Parag. 7.

6. *A.* having a Bill of Exchange payable to him, and he being indebted to *B.* in a Sum of Money, ſends and indorſes this Bill to *B.* Afterwards *B.* brought *Aſſumpſit* againſt *A.* for the Money, and on *Non Aſſumpſit*, *A.* gave in Evidence this Bill of Exchange indorſed, and that it had lain ſo long in *B*'s Hands after it was payable, and reckoned it as Money paid and in his Hands, but it was diſallowed; for a Bill ſhall never go in Diſcharge of a precedent Debt, except it be Part of the Contract that it ſhould be ſo. If *A.* ſells Goods to *B.* and *B.* is to give a Bill in ſatisfaction, *B.* is diſcharged though the Bill is never paid; for the Bill is Payment: But otherwiſe a Bill ſhould never diſcharge a precedent Debt or Contract; but if

* See P. 17.

Part

Part be received, it ſhall be only a Diſcharge of the old Debt for ſo much. 1 *Salk* 124. *Clark* v. *Mundal.*

7. The Defendant took up ſeveral Goods of the Plaintiff, who ſent his Servant with a Bill to him for the Money. The Defendant orders the Servant to write him a Receipt in full of the Bill, which he did, and thereupon he gave him a Note upon a third Perſon, payable in two Months: The Maſter ſent ſeveral Times to the third Perſon, to preſent him the Note, but could not get Sight of him within the Time; the Party breaks, and all this appearing in Evidence, and that the Defendant went to Sea the next Day after he gave the Note; now this Action was brought againſt the Defendant for the Money.

Holt, Ch. Juſtice. If a Man gives a Note upon a third Perſon in Payment, and the other takes it abſolutely as Payment; yet if the Party giving it knew the third Perſon to be breaking, or to be in a failing Condition, and the Receiver of the Note uſes all reaſonable Diligence to get Payment but cannot, this is a Fraud, and therefore no Payment; and here was no Laches in the Plaintiff; for the Party failed before the Money was payable. The Chief Juſtice directed for the Plaintiff. *Holt*'s *Rep.* 122. *Popley* v. *Aſhley.*

SECT. V.

What ſhall be deemed a Bill of Exchange within the Cuſtom of Merchants.

1. AS the Cuſtom of Merchants hath eſtabliſhed theſe Bills and Notes; ſo hath it preſcribed their Form, and required that the ſame ſhould be in Writing, and drawn by the Party, or thoſe having legal Authority from him; and ſuch Drawing raiſes a Contract to pay the ſame without any expreſs Promiſe. 3 *New Ab.* 606. *Carth.* 510. *Salk.* 128. *Starky* v. *Cheeſman.*

2. As to the * Form of the Bill, it is ſaid, that the ſame Strictneſs and Nicety are not required in penning of Bills current between Merchant and Merchant, as in Deeds, Wills, *&c.* On the other Hand it may happen that a Writing may have the Form of a Bill of Exchange, and yet be otherwiſe. 3 *New Ab.* 606. *Lucas* 287.

3. As if *A.* draw a Bill in this Form; *Sir, pray pay to* H 1945 *l. upon Demand out of the Money belonging to the Proprietors of the* Devonſhire *Mines, being Part of the Conſideration-Money for the Purchaſe of the Manor of* Weſt-Buckland. This is no ſuch Bill of Exchange as will intitle *H.* to an Action againſt the Drawer on the Cuſtom of Merchants; for it is only a Direction or Appointment to the Caſhier to pay the Money, and that out of a particular Fund, and doth not anſwer the Neceſſity of Trade, not being a negotiable Note nor indorſible over; and charging the Drawer on ſuch a Note, would be liable to this further Inconveniency, that hereby every one who gives his Steward an Order or Authority to pay Money, might be charged for Non-Payment. *Stran.* 591. 3 *Geo.* 1. *Jenney* v. *Herle. L. Raym.* 1361. *S. C.*

4. So where a Bill drawn by an Officer upon his Agent, requiring him to pay ſo much out of his *growing Subſiſtence*, was held no Bill of Exchange, nor the Drawee liable though he accepted ſuch Bill; for it concerns neither Trade nor Credit; but is to be paid out of the growing Subſiſtence of the Drawer; ſo that if the Party die, or the Fund be taken away, the Payment is to ceaſe and determine. And it would be of dangerous Conſequence to make thoſe Orders which a Man gives to his Steward or Bailiff, no way concerning Trade, to be Bills of Exchange. *L. Raym.* 1361. 1 *Geo.* 1. *Jocelyn* v. *Laſerre.*

* There are no preciſe Words neceſſary to be uſed in a Bill of Exchange or Promiſſory Note. 2 Ld. Raym. Rep. 1397. Trim. 11 Geo. I. cites Raſt. 338, and ſays, that *Deliver ſuch a Sum of Money*, makes a good Bill of Exchange.

5. In

5. In Action upon the Caſe upon ſeveral Promiſes, the Plaintiff in his firſt Count declared, that one *Thomas Rogers*, 8th *Auguſt*, 1728, *&c.* according to the Cuſtom of Merchants, his certain Bill of Exchange with his own Hand and in the Name of the ſaid *Thomas* ſubſcribed, did make, dated the ſame Day and Year, and directed the ſaid Bill of Exchange to the ſaid *Rogers*, and thereby requeſted the ſaid *Rogers* to pay the ſaid *Henry*, or his Order, 14 *l.* 3 *s.* out of the *fifth Payment* when it ſhould become due, and it ſhould be allowed by the ſaid *Thomas*, which was afterwards accepted by the Defendant; *ratione quorum præmiſſorum*, the Defendant became liable to pay the ſaid 14 *l.* 3 *s.* to the Plaintiff *Henry*, and ſo being liable, promiſed to pay, *&c.* Then there were other Counts in the Declaration, to which Counts the Defendant pleaded *non aſſumpſit*, &c. and as to this Count the Defendant demurred. And it was inſiſted upon by Mr. *Parker* for the Defendant, that this Action was not maintainable upon this Bill as a Bill of Exchange, according to the Reſolutions in the Caſe of *Jocelyn v. Laſerre* and *Jenney* v. *Herle* (the two foregoing Caſes) and of that Opinion was the Court, and gave Judgment for the Defendant. *L. Raym.* 1563. 3 *Geo.* 2. *Haydock* v. *Lynch.*

6. Error of a Judgment in *C. B.* wherein the Plaintiff declares, that *A. B.* drew a Bill of Exchange, dated 25th of *May*, whereby he requeſted the Defendant one Month after Date to pay the Plaintiff or Order 9 *l.* 10 *s.* "as my quarterly Half Pay, to be due from 24th *June* to 27th of *September* next by Advance." And the Action is againſt the Defendant upon his Acceptance. It was objected that this was no Bill of Exchange; becauſe it is not to pay in all Events, but is left to the Pleaſure of the Perſon on whom it is drawn either to advance the Money or not: And it was compared to the Caſe of *Jocelyn* v. *Laſerre* (the laſt but one) which was to pay out of his *growing Subſiſtence*, and to the Caſe of *Jenney* v. *Herle* (the laſt but two) which was payable out of

a particular Fund, and in both Caſes held to be as no Bill of Exchange. *Sed per Curiam*, the quarterly Half-Pay is a certain Fund, which the growing Subſiſtence was not: The Mention of the Half-Pay is only by way of Direction how he ſhall reimburſe himſelf, but the Money is ſtill to be advanced on the Credit of the Perſon. The Reaſon it was held no Bill of Exchange in *Jenney* v. *Herle* was, becauſe it was no more than a private Order to a Man's Servant. Judgment affirmed. *Stran.* 762. 13 *Geo.* 1. *Mackleod* v. *Snee & al.* *L. Raym.* 1481.

7. The Plaintiff declared upon the Cuſtom of Merchants againſt the Defendants as Acceptors of a Bill of Exchange, and the Inſtrument run in theſe Words:

Meſſrs. Gilly *and Co.*

Pray pay Mr. Richard Banbury *one Month after Date two hundred Pounds on Account of Freight of the* Veale Galley, Edward Champion, *and this Order ſhall be your ſufficient Diſcharge for the ſame.* J. GIBSON.

Accepted for Liſſet *and* Gilly *of* Leghorne *to pay as remitted from thence at Uſance.*

18 March, 1748. H. GILLY.

And two Objections were made by the Defendants: 1ſt, That this was not a Bill of Exchange; for it is not payable to Order, ſo as to be negotiable: It is not ſaid to be *for Value received:* And it is only an Order upon a particular Fund, like the Caſe of *Jenney* v. *Herle* (Page 22) and ſeveral Merchants proved that they did not look upon it to be a Bill of Exchange; and others were of a contrary Opinion.

The Chief Juſtice ruled it not to be a Bill of Exchange. He ſaid it was not in the Power of the Parties to make what Form they pleaſe paſs for ſuch a Bill; it ought to be agreeable to the *Lex Mercatoria:* The Privilege ariſes from the Convenience to Trade, which is not conſulted in this Caſe. And he thought it bad upon the Objection of the Fund

out

out of which it was to be paid: However, being a mercantile Tranſaction, he left it to the Special Jury of Merchants; who found it to be no Bill of Exchange on the Objection for want of *Value received.*

The ſecond Objection was, that the Plaintiff (ſuppoſing it a Bill of Exchange) had not ſhewn there was any Remittance to the Defendants; and that this was not an abſolute Acceptance, but only conditional: And ſo the Chief Juſtice declared he underſtood it, and left it to the Jury. But they finding for the Defendants upon the firſt Point, gave no Opinion as to this. *Stran.* 1211. 17 *Geo.* 2. *Banbury* v. *Liſſet and Gilly.*

8. In Caſe for Money had and received to the Plaintiff's Uſe, the Defendant pleaded *Non Aſſumpſit*, and gave Notice to ſet off the following Bill of Exchange, directed to *J. S.* "Sir, at ſix Weeks after "Date pay to *Benjamin Wheatley*, Eſq; or Order, "eight Guineas for your humble Servant, *John* "*Pierce. London, Auguſt* 23d, 1736." At the Trial it was objected, and agreed to by the Court, firſt, that this was not a Bill of Exchange within the Cuſtom of Merchants, nor could be taken Advantage of as ſuch, either by Way of Set-off, or by an Action brought upon it; nor would it be any Sort of Evidence of Money lent; there being *no Conſideration, either appearing on the Note, or offered to be proved*, and it is nothing more than the bare Power or Authority to receive ſo much to the Plaintiff's Uſe. Secondly, that if it had amounted to a Bill of Exchange, yet the *Laches of the Defendant, in not demanding the Money, and giving Notice in Caſe of Non-Payment* for ſo long a Time, would effectually diſcharge the Plaintiff; and accordingly the Plaintiff had a Verdict, at the Sittings in *C. B.* at *Weſtminſter*, before Lord Chief Juſtice *Willes*, after Trin. Term, 1742. *Pierce* v. *Wheatley. Vin. Ab. Tit.* Bills of Exchange. (A) 20.

9. *Pay to me or my Order ſo much*, is a Bill of Exchange, if accepted; and this is the Way to make a

Bill

Bill of Exchange without Intervention of a third Perſon. 1 *Salk.* 130. *Trin.* 2 *Ann. B. R. Butler* v. *Crips.*

SECT. VI.

Of the Acceptance.——What ſhall be deemed a good Acceptance.——Whoſe Acceptance ſhall bind.

1. THE Acceptance of a Bill of Exchange is the ſubſcribing, ſigning, and making a Perſon Debtor for the Sum of its Contents; by obliging him in his own Name, to diſcharge it at the Time mentioned therein. The Acceptance is uſually made by the Perſon upon whom the Bill is drawn, when it is preſented to him by the Bearer. *Dict. Tr. and Com.* 5. *Savary's Dict. Tit.* Acceptation.

2. A very ſmall Matter will amount to an Acceptance; and any Words will be ſufficient for that Purpoſe, which ſhew the Party's Aſſent or Agreement to pay the Bill; as if upon the Tender thereof to him, he ſubſcribes *accepted*, or *accepted by me A. B.* or, *I accept the Bill, and will pay it according to the Contents*; theſe clearly amount to an Acceptance. *Molloy*, Book 2. Chap. 10. §. 15.

3. If the Party underwrites the Bill, *preſented* ſuch a Day, or only the Day of the Month; this is ſuch an Acknowledgment of the Bill as amounts to an Acceptance. 3 *New Ab.* 610. *Comb.* 401.

4. If the Party ſays, *Leave your Bill with me and I will accept it*, or *Call for it To-morrow and it ſhall be accepted*; theſe Words, according to the Cuſtom of Merchants, as effectually bind, as if he had actually ſigned or ſubſcribed his Name according to the uſual Manner.

But if a Man ſays, *Leave your Bill with me, I will look over my Accounts and Books between the Drawer and I, and call To-morrow and accordingly the Bill ſhall be accepted*; this does not amount to a compleat Acceptance;

ceptance; for the Mention of his Books and Accounts ſhews plainly that he intended only to accept the Bill, in Caſe he had Effects of the Drawer's in his Hands. And ſo it was ruled by the Lord Chief Juſtice *Hale* at *Guildhall*. *Molloy*, Book 2. Chap. 10. §. 20.

5. A foreign Bill was drawn on the Defendant, and being returned for want of Acceptance, the Defendant ſaid, that *if the Bill came back again he would pay it*; this was ruled a good Acceptance. 3 *New Abr.* 610. cites *Mich.* 6 *Geo.* 1. *B. R. Car* v. *Coleman.*

6. The Defendant was ſued as Acceptor of a Bill of Exchange. And upon the Evidence it appeared to be a parol Acceptance only, which the Chief Juſtice ruled to be ſufficient, that being good at Common Law, and the Stat. 3 & 4 *Anne*, *Cap.* 9, which requires it to be in Writing in order to charge the Drawer with Damages and Coſts, having a Proviſoe that it ſhall not extend to diſcharge any Remedy that any Perſon may have againſt the Acceptor *. Upon this Direction the Jury found for the Plaintiff. But the Chief Juſtice of the Common Pleas having lately ruled it otherwiſe, the Court was moved for a new Trial. And, in order finally to ſettle this Point, it was ordered to be argued: And after Argument the Court was of Opinion, that the Direction in the preſent Cauſe was right and agreeable to conſtant Practice. *Stran.* 1000. 8 *Geo.* 2. *Lumley v. Palmer.*

7. The Bill was for Satisfaction of a Bill of Exchange drawn upon the Defendant and accepted by him. Pending the Suit, the original Defendant died, and it was revived againſt his Executors; praying alſo a Diſcovery of Aſſets, and to be ſatisfied thereout. On the Proofs ſome Queſtion was made, whether the Acceptance was ſufficient to charge the Defendant, and whether the Plaintiff by keeping the Note about ten Days after it became due, without coming to the Drawee for the Money, had not diſcharged the Acceptor; But it was inſiſted for the Defendant as a

* See P. 19.

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previous Matter, that the Plaintiff had a plain Remedy at Law, and that his Caſe depended upon Facts that ought to be tried by a Jury, and not be determined in this Court.

Hardwicke Lord Chancellor. Regularly the Plaintiff ought to purſue his Remedy at Law; and not in this Court: And, if the Caſe ſtood as it did at firſt, I ſhould certainly diſmiſs the Bill; but the Bill of Revivor praying a Satisfaction out of Aſſets, and a Diſcovery of Aſſets, it is made a Caſe of which this Court takes Cognizance, and then the Prayer of Satisfaction is an Incident that follows with it. I have, therefore, no Doubt but that the Plaintiff is proper in praying a Remedy in this Court. But with regard to the Acceptance, if there were a Doubt of it, as to the Fact, or whether in Law what has been done amounts to an Acceptance, it may be ſtill neceſſary to ſend the Parties to a Trial at Law; but I think there is no Doubt of either. The Teſtator, when the Bill was brought to him, received it, entered it in his Book, according to his Courſe of Trade, and the Entry is proved to have been made under a particular Number, and wrote that Number under the Bill and returned it. Now it is ſaid to be the Cuſtom of Merchants, that if a Man under-writes any thing to a Bill, it amounts to an Acceptance. But if there were no more than this in the Caſe, I ſhould think it of little Avail to Charge the Defendant; but what determines me is the Teſtator's Letters; and I think there can be no Doubt, but that an Acceptance may be by Letter, and it has been ſo determined. There was a Doubt whether a parol Acceptance be good. Lord Chief Juſtice *Eyre* held it was; Lord *Raymond* held the Contrary, and there was a like Caſe came once before me at *Niſi prius*, *Lumley* and *Palmer* (the preceding Caſe) and I had a Caſe made of it for the Opinion of the Court; and it was ſeveral Times argued, and at laſt ſolemnly determined, that ſuch Acceptance is good; much more therefore an Acceptance by Letter.

As to the Plaintiff's being intitled to Intereſt, I think it a clear Caſe that he is, though no Proteſt has been made; for that is neceſſary only to intitle the Payee to Damages againſt the Drawer, and all the Damage that can be had in ſuch a Caſe is the Intereſt.——Decree for the Defendant to pay the Note with Intereſt, at the Rate of four *per Cent.* the Plaintiff to pay the Coſts to the Time of the Bill of Revivor, and after each Party to bear their own Coſts. *Dict. Tr. and Com.* 10 *Geo.* 2. *In Chan. Powell* and *Moliere.*

8. Caſe upon a Bill of Exchange againſt the Acceptor. And it was objected, that the Plaintiff ſhould not be admitted to prove the Acceptance, until he had proved the Hand of the Drawer. And a Difference was taken between this Caſe, and the Caſe of an Action againſt the Indorſer, who is liable tho' the Bill be not ſigned by the Perſon who is ſuppoſed to draw it: Becauſe an Indorſer is in the Nature of a new Drawer; whereas an Acceptor is not liable, unleſs the Bill was fairly ſigned by the Drawer. But as to this the Chief Juſtice was of Opinion, that the Proof of an Acceptance was a ſufficient Acknowledgement on the Part of the Acceptor, who muſt be ſuppoſed to know the Hand of his own Correſpondent: but he ſaid it would not be concluſive Evidence; and therefore if the Defendant could ſhew the contrary, the reading the Bill on Behalf of the Plaintiff would not preclude him. Whereupon the Bill was read, and the Queſtion came upon the Validity of the Acceptance. As to which the Caſe was this: The Bill was drawn from *New-England*, for a Sum of Money advanced there to fit out a Ship that had put in there after having been taken by Pirates. The Bill was drawn upon the Defendant, who was the Freighter; and, he living at *Whitehaven*, the Plaintiff applied to a Merchant in *London* who was his Correſpondent, to get him to ſend this Bill, and another for 150 *l.* drawn by the ſame Perſon, and on the ſame Account. He ſent both Bills incloſed to the Defend-

ant, who by Letter acknowledged the Receipt of them; and writes thus: "The two Bills of Exchange, which you ſent me, I will pay them in "caſe the Owners of the *Queen Anne* do not; and, "they living in *Dublin*, muſt firſt apply to them. I "hope to have their Anſwer in a Week or ten Days. "I do not expect they will pay them, but I judge it "proper to take their Anſwer before I do; which I "requeſt you will acquaint Mr. *Wilkinſon* with, and "that he may reſt ſatisfied of the Payment." In another Letter he writes, "I have not had an Opportunity of ſending the Bills you ſent me to the Owners of the *Queen Anne* to *Ireland*, but will take the "firſt Opportunity, and then ſhall remit to the Gentleman concerned, according to my Promiſe."

The Defendant upon this paid the 150 *l.* Bill; but in this Action inſiſted, that it did not amount to an Acceptance, being only conditional, to pay it in caſe the Owners of the *Queen Anne* did not; and his Promiſe to procure it from them was in Favour of the Plaintiff. But the Chief Juſtice was of Opinion, that it was rather in Favour of himſelf; and he having undertaken to write to them, it was not incumbent on the Plaintiff to ſhew any Application to them; and as to the Acceptance, it was in his Opinion a very ſtrong one: The Bill was preſented to the Defendant: Says he, this is a good Bill, and I will pay it; you need not proteſt it, for it ſhall be paid; I only deſire, that for my Convenience you would ſtay till I can write to the Owners in *Ireland*, who I do not expect will do any thing in it: this will be of Service to me; and as to you, you ſhall be ſecured, for I promiſe you ſhall have the Money in all Events.——The Bill being payable thirty Days after Sight, the Jury gave Intereſt for thirty Days after the Date of the firſt Letters, which acknowledged the Receipt of the Bill. *Strange*, 648. *Wilkinſon* v. *Lutwidge*.

9. The Defendant accepted a Bill of Exchange to pay it when the Goods conſigned to him, and for which the Bill was drawn, were ſold. And the Plain-

tiff declared upon the Cuſtom of Merchants. After a Verdict for the Plaintiff, it was moved in Arreſt of Judgment, That this Acceptance depending on the Contingency of the Sale of the Goods, was not within the Cuſtom of Merchants, or negotiable. But the Court, upon Conſideration, held it good. For tho' the Plaintiff might have refuſed to take ſuch an Acceptance, and have proteſted the Bill, yet no Body can ſay he might not ſubmit to it. And it will affect Trade, if Factors are not allowed to uſe this Caution, when Bills are drawn before they have an Opportunity to diſpoſe of the Goods. A Man who is drawn upon to pay at 10 Days Sight, may accept for 30; though the other might proteſt the Bill. *Stran.* 1152. *Smith* v. *Abbot.*

10. It is held, that an Acceptance may be qualified, as thus: I accept this Bill, half to be paid in Money and half in Bills. And this is good by the Cuſtom of Merchants; for he who may refuſe the Bill totally may accept it in Part; but he to whom the Bill is due may refuſe ſuch Acceptance, and proteſt it ſo as to charge the Drawer. Alſo it is ſaid, that after ſuch Acceptance, and Refuſal of Payment, he hath the ſame Liberty of charging the Drawer, that he had in caſe the Bill had been accepted abſolutely, and Payment refuſed. 3 *New Abr.* 611. *Cumb.* 452. *Petit* v. *Benſon.*

11. The Plaintiff declared on a Bill of Exchange drawn by *J. S.* on the Defendant, dated the 25th of *March* 1696, payable a Month after Sight, and that afterwards, to wit, 27th of *April* 1697, he ſhewed it to the Defendant, and he promiſed to pay it *ſecundum tenorem billæ prædictæ.* After Verdict for the Plaintiff on *Non Aſſumpſit*, it was moved, in Arreſt of Judgment, that this Manner of declaring was abſurd, it being impoſſible to pay *ſecundum tenorem billæ* at the Time of the Promiſe. *Et per Cur.* Where the Time of Payment is paſt at the Acceptance of the Bill, the Acceptance can be only to pay the Money; and if he was ſo abſurd as to promiſe to pay the Money *ſecundum*

cundum tenorem billæ, yet that is no more in Law now, than a Promiſe to pay the Money generally. But it is better to declare, in ſuch a Caſe, on a general Promiſe to pay the Money. 1 *Salk.* 127. *Jackſon* v. *Pigot.* *Carth.* 459. *S. C.* *L. Raym.* 364. *S. C.*

12. In *Aſſumpſit* the Plaintiff declared upon a Bill of Exchange, drawn the 28th of *October* at double Uſance for 700 Ducats payable at *Amſterdam*, which the Defendant accepted the 31ſt of *December* following, *per quod devenit onerabilis* to pay the Bill, & *in conſideratione inde*, the ſame Day and Year he aſſumed to pay it *ſecundum tenorem & formam billæ prædictæ.* Upon *Non Aſſumpſit* pleaded, there was a Verdict for the Plaintiff. Sir *Bartholomew Shower* moved in Arreſt of Judgment, That the Time of Payment of the Bill being expired at the Time of the Acceptance, it was impoſſible that the Defendant ſhould aſſume to pay it *ſecundum tenorem billæ*, for that was out of his Power. And tho' this Acceptance was within the three Days of Grace, *viz.* the laſt Day, within which Time Payment is good, and no Proteſt for want of Payment can be made until the ſaid Days are elapſed, yet it is a Breach not to have paid the Money within the Uſance; and the Plaintiff has no need to ſay in his Declaration upon a Bill of Exchange, that he did not pay it within the Days of Grace; but if the Fact was that it was then paid, it ought to be ſhewn of the other Side. So that here the Time of Payment was elapſed at the Time of Acceptance; and therefore it was impoſſible to accept it then to be paid *ſecundum tenorem billæ.* And this Objection is the ſtronger in reſpect to the Diſtance of the Place; for, admitting that Payment within any of the three Days of Grace would be according to the Tenor of the Bill, yet when the Acceptance here was upon the laſt of the ſaid Days, it was impoſſible to pay the Money to the Plaintiff the ſame Day at *Amſterdam.* 2. The Acceptance here is not good, becauſe no Houſe is mentioned, where the Bill ſhould be paid. Mr. *Hall* for

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the Plaintiff cited the Case of * *Jackson* and *Pigot*, as a Case adjudged in Point. And Mr. *Northey* for the Plaintiff said, that there might be some Difficulty if the Action had been brought against the first Drawer; but none where the Defendant is chargeable by his own Acceptance; for a Man may tender a Bill to be accepted after the Time of Payment is expired, to oblige the Acceptor if he will accept it, but not to affect the Drawer.

Holt, Chief Justice. There must be such an Acceptance as will bind the Acceptor, and that is sufficient. As if a Bill of Exchange be payable at *London*, and the Person upon whom it is drawn accepts it, but names no House where he will pay it; the Party that has the Bill is not bound to be satisfied with this Acceptance, but nevertheless if he will be content with it, it will bind the Acceptor. So if *A.* draws a Bill upon *B.* who refuses to accept it; and *C.* rather than it shall be protested, accepts it for the Honour of *A.* this Acceptance will bind † *C.* So if a Man offer to *B.* a Bill of Exchange payable in *Amsterdam*, and *B.* refuses to accept it unless some Merchant in *London* will sign it; if the Merchant signs, he becomes Acceptor for the Honour of the Drawer. Acceptance after the Day of Payment is common, and there is no Inconvenience in it. And *Holt* Chief Justice said, that he remembered a Case where an Action was brought upon a Bill of Exchange, and the Plaintiff declared upon the Bill, where it was negotiated after the Day of Payment; and a Question was made, Whether the Plaintiff could declare upon the Bill, or whether he ought to bring *Indebitatus Assumpsit?* And he said, that he had all the eminent Merchants in *London* with him at his Chamber at *Serjeants Inn*, in the long Vacation, about two Years ago; and they all held it to be very common, and a very good Practice. And as to the Matter of the *Secundum formam*, &c. it is the Payment of the Money that is the Substance of the Promise; and so it was held in the Case of *Jackson*

* The last Case. † See P. 36. Par. 15.

and *Pigot*. Judgment for the Plaintiff. *L. Raym.* 574. 1 *W.* 3. *Mutford* v. *Walcot*. 1 *Salk.* 129. *S. C.*

13. In caſe on a Bill of Exchange the Plaintiff ſets forth, that there is a Cuſtom, that if any Merchant in *London* draws his Bill or Bills upon any Merchant in *Rotterdam*, payable to any Merchant or Order, and if the Merchant there accept any ſuch Bill, and before the Acceptance or after, the Merchant to whoſe Order the Money is directed to be paid, doth indorſe it to any other Merchant, and that other Merchant doth indorſe it to ſome other, and the Merchant, to whom the Bill is directed, accepts it after ſuch Indorſement, and fails in Payment to the Merchant to whom indorſed at the Time limited, whereby the Bill becomes proteſted, and Notice thereof is given to the Drawer; that, in ſuch Caſes, the Drawer becomes liable to pay the ſame with Damage to the Indorſer. That the Defendant drew a Bill of Exchange, 19th *November* 1688, on *Edward Williams*, payable in two Months and a half, to the Order of one *Hartopp*, for 300*l.* Value of himſelf; and *Hartopp* the ſame Day indorſed it to *Marques*, and *Marques* indorſed it to the Plaintiff: That the Plaintiff afterwards, *viz.* 8th *February* 1689, gave notice to *Williams*, and he then accepted the Bill: That *Williams* failed to pay it, and, by Reaſon thereof, the ſaid 8th *February*, the Bill was proteſted; of which Proteſt the Defendant had Notice the 28th of *April*, and did not pay it.

The Defendant demurred generally to the Declaration, the Bill not being accepted till after the Day of Payment was expired; and it was inſiſted, that the Proteſt ſhould have been for Non-Acceptance within the Time, and Failure of Payment at the Time.

By *Holt* C. J. The Law of Merchants made him liable who was the Drawer of the Bill, tho' the Acceptance were after the Day; for it need not be tendered within the Time. Now by that Law the Drawer is chargeable by the *Value received*; and tho' the Money were not paid, or the Bill preſented within the

Time mentioned, yet it ought ſtill to be paid; and if the Party do not tender and proteſt at the Day, and the Perſon upon whom the Bill is drawn fails in the mean time, he loſes his Money; otherwiſe if there be no particular Damage. Judgment was given for the Plaintiff. *Holt's Rep.* 114. 3 *W. & M. Megadara* v. *Holt.*

14. A Bill once accepted cannot be revoked by the Party that accepted it, tho' immediately after, and before the Bill becomes due, he hath Advice that the Drawer is broke.

If a Bill is not accepted to be paid at the exact Time, it muſt be proteſted; but if accepted for a longer Time, the Party to whom the Bill is made payable muſt proteſt the ſame for want of Acceptance according to the Tenor; yet he may take the Acceptance offered notwithſtanding. Nor can the Party, if he once ſubſcribes the Bill for a longer Time, revoke the ſame, or blot out his Name, altho' it is not according to the Tenor of the Bill; for by his Acceptance he hath made himſelf Debtor, and owns the Draught made by his Friend upon him, whoſe Right another Man cannot give away, and therefore cannot refuſe or diſcharge the Acceptance.

Note, This Caſe will admit of two Proteſts, perhaps three.

1. One Proteſt muſt be made for not accepting according to the Time.

2. For that the Money being demanded according to the Time mentioned in the Bill, was not paid.

3. If the Money is not paid according to the Time that the Acceptor ſubſcribed or accepted.

A Bill was drawn payable the firſt of *January*; the Perſon upon whom the Bill was drawn accepts it to be paid the firſt of *March*; the Servant brings back the Bill. The Maſter perceiving this enlarged Acceptance, ſtrikes out the firſt of *March*, and puts in the firſt of *January*, and then ſends the Bill to be paid. The Acceptor then refuſes. Whereupon the Perſon, to whom the Monies were to be paid, ſtrikes

out the first of *January*, and puts in the first of *March* again. On an Action brought on this Bill; the Question was, Whether these Alterations did not destroy the Bill? And ruled, they did not. *Per.* L. Ch. Justice *Pemberton*. *Price & Shute*. *Pasch.* 33 *Car.* 2. in *B. R.* *Molloy*, B. 2. C. 10. §. 28.

15. A Bill may be accepted for Part; for that the Party upon whom the same was drawn, had no more Effects in his Hands; which being usually done, there must be a Protest, if not for the whole Sum, yet at least for the Residue: However, after Payment of such Part, there must be a Protest for the Remainder.

Before the Time of Payment of the Bill, the Party may notwithstanding accept it, and pay it at the Time of Payment; or another may accept the Bill for the Honour of the Drawer, and if he pay it in Default of the Party, yet before Payment he is bound to make a Protest, with a Declaration that he hath paid the same for the Honour of the Drawer, whereby to receive his Money again. *Molloy*, B. 2. C. 10. §. 21.

16. Acceptance to pay less than is mentioned in the Bill is good for so much against the Acceptor. *Stran.* 214. *Mich.* 6 Geo. 1. *Wegersloffe* and *Keene*.

17. Case by the Indorsee of a Bill of Exchange against the Defendant as Acceptor, who on Tender of the Bill wrote, "Messrs. *Caswal* and *Mount*, pay "this Bill when due for *Thomas Chitty*." The Bill fell due 2d *January*, 1741; the Bankers paid till the 19th, at two, and 21st of *January*, the Money was demanded of the Defendant. For the Defendant it was insisted, that the Plaintiff had given such a Credit to the Bankers, as to make it his loss; and it was compared to the common Case of a Note or Draught kept.

For the Plaintiff it was said, that there was no limited Time, but that of the Statute of Limitation, to sue the Acceptor; and that the Plaintiff cannot come in as a Creditor of the Goldsmiths; because they have done nothing to make themselves liable.

The Chief Juſtice held, that it was the Loſs of the Plaintiff, who, though he might have refuſed to take ſuch an Acceptance, yet had now agreed to it: And it was to all Purpoſes in the Nature of a Draught, which is always conſidered as actual Payment, when a reaſonable Time to receive it in is elapſed. *Stran.* 1195. *Biſhop* v. *Chitty.*

18. A Bill drawn on two muſt regularly have a joint Acceptance; but by the Cuſtom of England, where there are two joint Traders, and one accepts a Bill drawn on both for him and Partner, it binds both, if it concerns the joint Trade; otherwiſe if it concerns the Acceptor only in a diſtinct Intereſt and Reſpect. *Salk.* 126. *Pinkney* v. *Hall. L. Raym.* 175. *S. C. Molloy*, B. 2. C. 10. §. 18.

19. If a Book-keeper or Servant or other Perſon, having Authority, or uſually tranſacting Buſineſs of this Nature for the Maſter, accept a Bill of Exchange, this ſhall bind ſuch Maſter. 3 *New Abr. Law*, 611. *Molloy*, B. 2. C. 10. §. 27. *Marius*, 104.

20. The Plaintiff was Indorſee of a Bill of Exchange drawn from *Scotland* upon the Defendant, in theſe Words. "At thirty Days Sight pay to *J. S.* "or Order 200 *l.* Value received of him, and place "the ſame to Account of the *York-Buildings* Com-"pany *per* Advice from *Charles Mildmay*. To Mr. "*Humphry Biſhop*, Caſhier of the *York-Buildings* "Company, at their Houſe in *Wincheſter-Street*, *Lon-"don*. Accepted 13th *June*, 1732, *per H. Biſhop*." This Bill not being paid, an Action was brought againſt the Defendant upon his Acceptance. And the Defendant proved that the Letter of Advice was addreſſed to the Company; and that the Bill being brought to their Houſe, he was ordered to accept it, which he did in the ſame Manner as he had accepted other Bills. But Mr. Juſtice *Page*, who tried the Cauſe, directed the Jury to find for the Plaintiff, which they did accordingly.

And now upon Motion for a new Trial, the Court held that the Direction was right. For the Bill, upon the Face of it, imports to be drawn upon the Defendant, and it is accepted by him generally, and not as Servant to the Company, to whoſe Account he had no Right to charge it, till actual Payment by himſelf. And this being an Action by an Indorſee, it would be of dangerous Conſequence to Trade, to admit of Evidence ariſing from ſuch extrinſic Circumſtances, as the Letter of Advice. And they ſaid, this differed widely from the Caſe of a Bill addreſſed to the Maſter, and under-wrote by the Servant; where undoubtedly the Servant would not be liable, but his Acceptance would be conſidered as the Act of the Maſter. A Bill of Exchange is a Contract by the Cuſtom of Merchants, and the whole of that Contract muſt appear in Writing. Now here is nothing in Writing to bind the Company, nor can any Action be maintained againſt them upon the Bill; for the Addition of Caſhier to the Defendant's Name is only to denote the Perſon with more certainty, and the *York-Buildings* Houſe is only to inform the Order, where the Drawee is to be found; and the Direction, whoſe Account to place it to, is for the Uſe of the Drawee only. And they compared it to the Caſe of *Carth.* 5. 2 *Ven.* 307, where a Bill was drawn payable to *Price*, for the Uſe of *Calvert*, and held that the legal Property was in *Price*, which is ſtronger than the preſent Caſe. They ſaid it might be otherwiſe, if the Action had been by *J. S.* who was privy to the Tranſaction, and it had appeared he tendered the Bill as a Bill on the Company. But this Plaintiff being a Stranger, they could not conſider thoſe Circumſtances. The Plaintiff had Judgment. *Strange*, 955. *Thomas* v. *Biſhop*.

SECT.

SECT. VII.

Of the Proteſt: The Neceſſity and Validity thereof: When to be made; and of giving Notice to the Drawer of the Drawee's Refuſal.

1. A Proteſt does not raiſe any Debt, but only ſerves to give formal Notice that the Bill is not accepted, or accepted and not paid; and this by the common Law was, and is ſtill neceſſary on every foreign Bill before the Drawer can be charged; but it was not required on any inland Bill, before the Stat. 9 and 10 *W.* 3. nor does the Want of it ſince that Stat. deſtroy the Remedy, which the Party had before againſt the Drawer for the Principal. 3 *New Abr. Law*, 612. *Molloy*, B. 2. Chap. 10. §. 51. 6 *Mod.* 80. 1 *Salk.* 131. See the Note, Page 17.

2. He, to whom a Bill is payable, muſt regularly reſort to the Drawee, and deſire him to accept the Bill before there can be a Proteſt; but if he be dead, or cannot be found, theſe are good Cauſes for proteſting the Bill; alſo, if after Acceptance, the Drawee dies, there is to be a Demand of his Executors or Adminiſtrators, and in Default of Payment a Proteſt; and in Caſe the Money becomes due before an Executor or Adminiſtrator can be appointed, yet this Delay is ſufficient Cauſe to proteſt the Bill. 3 *New Ab. Law*, 612. *Molloy*, B. 2. C. 10. §. 34.

3. But if he to whom the Bill is to be paid dies, there can be no Proteſt before a Probate of his Will, or Adminiſtration granted; for none but his Executors or Adminiſtrators can give a legal Diſcharge or Acquittance for the Money, and conſequently no other Perſon can ſue for or demand the ſame: and though Security be offered to indemnify the Drawee againſt the Executors, yet he is not obliged to accept thereof; being a Matter left entirely to his Conſideration, to judge and determine on the Sufficiency of

ſuch Security; and in this Caſe it is ſaid that if a Public Notary proteſt the Bill, an Action on the Caſe lies againſt him. 3 *New Abr. Law*, 612. *Molloy*, B. 2. C. 10. §. 34.

4. If a Bill be left with a Merchant to accept, which is loſt or miſlaid *, he to whom it is payable, is to requeſt the Merchant to give him a Note for the Payment, according to the Time limited in the Bill; otherwiſe there muſt be two Proteſts, the one for Non-Acceptance and the other for Non-Payment; and though ſuch Note be given, yet if the Merchant happens to fail, there muſt be a Proteſt for Non-Payment in order to charge the Drawer. 3 *New Abr. Law*, 613. *Molloy*, B. 2. C. 10. §. 26. *Marius*, 121.

5. The Proteſt is uſually made by ſome Notary Public; and ſuch Proteſt is, *prima facie*, good Evidence that the Bill was not accepted, or if accepted, that it was not paid, and ſufficient to put the Proof on the other Side †. 3 *New Abr. Law*, 613. *Skin.* 272.

6. A Proteſt on a foreign Bill of Exchange is abſolutely neceſſary to intitle the Party to recover againſt the Drawer, not only Intereſt and Coſts, but likewiſe the principal Sum; and for this Purpoſe the Bill muſt be preſented in a reaſonable Time; and in Caſe of Refuſal of Acceptance, or in Caſe the Drawee cannot be found, it muſt be proteſted in a reaſonable

* Where a Bill is caſually loſt and no new one can be had, and the Party on whom it is drawn does not inſiſt on having the original Bill, but refuſes Payment for another Reaſon, a Proteſt made on a Copy is ſufficient. 1 *Show*, 164.

† Beyond the Seas the Proteſt (for Non-Payment) under the Notary's Hand is ſufficient to ſhew in Court, without producing the very Bill itſelf. But if a Bill in *England* be accepted, and a ſpecial Action grounded on the Cuſtom be brought againſt the Acceptor at the Trial, the Party Plaintiff muſt produce the Bill Accepted, and not the Proteſt; otherwiſe he will fail in his Action at that Time. Therefore it is ſafe that a Bill once Accepted be kept, and only a Proteſt for Non-Payment be remitted; but a Bill for Non Acceptance muſt be remitted. *Molloy*, B. 2. C. 10. §. 25.

Time,

Time, and Notice of ſuch Proteſt, as alſo Notice of a Proteſt after Acceptance and Non-Payment given to the Drawer in a * reaſonable Time; for though the Drawer is bound to the Party, to whom the Bill is payable, till Payment be actually made, yet it is with this Condition and Priviſo that Proteſt be made in due Time, and a lawful and ingenuous Diligence uſed for the obtaining Payment of the Money; and the Reaſon hereof is, that the Drawer might have had Effects, or other Means of his, upon whom he drew to reimburſe himſelf the Bill, which, ſince for want of timely Notice he hath remitted or loſt, it were unreaſonable the Drawer ſhould ſuffer through his Neglect. 3 *New Abr. Law*, 613. *Molloy*, B. 2. C. 10. §. 31.

7. As to inland Bills, though a Proteſt was not neceſſary at common Law, in order to ſue the Drawer, and is only now neceſſary by the Stat. 9 and 10 *W.* 3. (P. 15.) and 3 and 4 *Anne* (P. 18.) to intitle the Party to Intereſt and Coſts; yet convenient Notice muſt be given by the Party, to whom the Bill is payable, to the Drawer, of the Drawee's Refuſal or Payment, and if any Damages accrue to the Drawer for want of ſuch Notice, it muſt be born by the Perſon to whom the Bill is payable; but this muſt be left to a Jury, who are to determine herein according to the Cuſtom of Merchants. 3 *New Abr. Law*, 613. 6 *Mod.* 80, 81. 1 *Salk.* 131. *Borough* v. *Perkins.* *Cumb.* 384. *Carth.* 510. 1 *Show*, 311. *L. Raym.* 993. See P. 17. See the next Caſe.

8. A Bill was drawn on *Sutor* payable in three Days; *Sutor* broke; the Perſon to whom it was payable kept the Bill by him four Years, and then brought *Aſſumpſit* againſt the Drawer: And by *Treby*, C. J. when one draws a Bill of Exchange, he ſubjects himſelf to the Payment, if the Perſon on whom it was drawn refuſes either to accept or pay: Yet that is with this Limitation, that if the Bill be not paid in convenient Time, the Perſon to whom it is payable

* See Page 10, 11.

ſhall

ſhall give the Drawer Notice thereof; for otherwiſe the Law will imply the Bill paid; becauſe there is a Truſt between the Parties, and it may be prejudicial to Commerce, if a Bill may riſe up to charge the Drawer at any Diſtance of Time; when in the mean time all Reckoning and Accounts are adjuſted between the Drawer and Drawee. 1 *Salk.* 127. *Allen* v. *Dockwra.*

9. The Cuſtom of Merchants is, that if *B.* upon whom a Bill of Exchange is drawn, abſconds before the Day of Payment, the Man to whom it is payable may proteſt it, to have better Security for the Payment, and to give Notice to the Drawer of the abſconding † of *B.* and after Time of Payment is incurred, then it ought to be proteſted for Non-Payment, or after it. But no Proteſt for Non-Payment can be before the Day whereon it is payable. Proved by Merchants at *Guildhall*, *Trin.* 6 *W.* and *M.* before *Treby*, Chief Juſtice. And the Plaintiff was non-ſuited, becauſe he had declared upon a Cuſtom, to proteſt for Non-Payment before the Day of Payment. *L. Raym.* 742. *Anon.*

10. The uſual Cuſtom in this Caſe is that the Drawer or Indorſer having received the Value, muſt procure an able Man, ſome Friend of his to underwrite the Proteſt, which is common for Non-Acceptance, or for want of better Security, uſing theſe or the like Words: *I here underwritten do bind myſelf as Principal, according to the Cuſtom of Merchants, for the Sum of Money mentioned in the Bill of Exchange, whereupon this Proteſt is made. Dated*, &c. *Marius*, 117.

† If a Merchant, who hath accepted a Bill of Exchange, ſhall happen to be inſolvent, or publickly reported to be failed in his Credit, and that he doth abſent himſelf from the Exchange before the accepted Bill be due: You muſt preſently on ſuch Report cauſe Demand to be made by a Notary for better Security, and in Default thereof, cauſe Proteſt to be made for want of better Security, and ſend away that Proteſt by the next Poſt, that your Friend may procure Security to be given by the Party who drew the Bill. *Marius*, 111.

SECT.

SECT. VIII.

Of the Indorſement on a Bill of Exchange, and who may indorſe it.

1. INdorſement is a Term known in Law, which by the Cuſtom of Merchants transfers the Property of the Bill or Note to the Indorſee; and is uſually made on the Back of the Bill, and muſt be in Writing; but the Law hath not appropriated any ſet form of Words as neceſſary to this Ceremony, and therefore it hath been held that if a Man write on the Back of a Bill of Exchange, *This is to be paid to* J. S. or, *The Contents of this is to be paid to* J. S. and ſets his Hand to it, this is a good Indorſement. 3. *New Abr. Law*, 609. *Farreſ.* 86, 87.

2. *Clark* having a Bill of Exchange payable to him or Order, puts his Name upon it, leaving a vacant Space above, and ſends it to *J. S.* his Friend, who got it accepted; but the Money not being paid, *Clark* brought an *Indebitatus Aſſumpſit* againſt the Acceptor: And it was objected on Evidence, that the Property was transferred to *J. S.*

Et per Holt, C. J. *J. S.* had it in his Power to act either as Servant or Aſſignee: if he had filled up the blank Space, making the Bill payable to him, that would have witneſſed his Election to have received it as Indorſee; but that being omitted, his Intention is preſumed to act only as Servant to *Clark*, whoſe Name he would uſe only in order to write the Acquittance over it. 1 *Salk.* 126. *Clark* v. *Pigot*, *Molloy*, B. 2. Chap. 10. §. 27.

3. A Bill of Exchange was indorſed in this Manner: *Pay the Contents of this Bill unto the Order of* J. S. who brought his Action as Indorſee, averring he had made no Order to any Body to receive the Money; and on demurrer it was objected, that *J. S.* could not maintain an Action; becauſe the Indorſement was not to him,

him, but to his Order: But the Court held the Action well brought againſt the Indorſer; and that among Tradeſmen, this Form of Indorſement is commonly uſed, although it is intended to be made payable to the Perſon, whoſe Order is mentioned. 3 *New Abr. Law*, 609. *Carth.* 403. *Fiſher* v. *Pomfret.*

4. It hath been adjudged that a Bill of Exchange cannot be indorſed for Part, ſo as to ſubject the Party to ſeveral Actions; as if *A.* having a Bill of Exchange upon *B.* indorſes Part of it to *J. S. J. S.* cannot bring an Action for his Part; although he alledge a Cuſtom amongſt Merchants for ſuch kind of Indorſement: for the Contract being intire and ſubjecting him only to one Man's Action, no Cuſtom can make him liable to two or more Actions for the ſame Debt. 3 *New Abr. Law*, 610. *Carth.* 466. *Hawkins* v. *Cardy.* 1 *Salk.* 65. *S. C.* where it is ſaid that the Plaintiff ſhould have acknowledged Satisfaction for the reſt. 3 *New Abr. Law*, 610. *L. Raym.* 360. *Stran.* 216. 1 *Inſt.* 385 a.

5. If a Bill of Exchange is made payable to *A.* who indorſes it to *B.* who indorſes it to *C.* which is proteſted for Non-Payment; *B.* may bring an Action on this Bill notwithſtanding his Indorſement. 3 *New Abr. Law*, 608. 1 *Show*, 163. *Dekers* v. *Harriat.*

6. The Money is to be paid to him in whoſe Favour the Bill is drawn, or to the Indorſee, in Caſe it be indorſed over, of which Indorſement the Drawer and Acceptor muſt take Notice at their Peril; alſo if there are ſeveral Indorſers and Indorſees, the laſt Indorſee is intitled to the Money. 3 *New Abr. Law*, 608. *Carth.* 130.

SECT.

SECT. IX.

Who ſhall be liable to the Payment of the Money; and of demanding it from the Drawer, and ſuing him, and the Indorſer and Acceptor.

1. EVERY* Drawer of a Bill is liable to the Payment thereof, as is every Acceptor and Indorſor. Alſo if there are ſeveral Indorſers of the ſame Bill, the laſt Indorſee may bring his Action againſt the firſt Indorſer, or any of them; for the Indorſement is, as it were, a new Bill, or at leaſt a Warranty, as ſome Books expreſs it, by the Indorſer, that the Bill ſhall be paid. 3 *New Abr. Law*, 607. *Skin.* 343. 1 *Salk.* 125. *L. Raym.* 181. *Stran.* 479.

2. If a Bill be drawn upon *A.* and he accepts it, and afterwards refuſes Payment, upon which the Bill is proteſted, the Perſon to whom it is payable may bring ſeveral Actions againſt the Acceptor and Drawer: for the Proteſt is no Diſcharge of the Acceptor, 3 *New Abr. Law*, 607.

3. But though the Drawer, Acceptor, and Indorſer, are all liable, yet the Party can have but one Satisfaction; and until ſuch Satisfaction is actually had, he may ſue all, or any of them: And accordingly it was adjudged in the *Exchequer Chamber*, where the Caſe was, an Indorſee ſued the Drawer and had Judgment againſt him; and he alſo brought an Action againſt the Indorſer, to which the Indorſer pleaded the Judgment againſt the Drawer: But the Plea was held ill; for that the Judgment was not Satisfaction, without which the Party could not be barred of the Remedy which he had againſt the other. 3 *New Abr. Law*, 607. 3 *Mod.* 86. *Skin.* 255. *Claxton* v. *Swift*. *Lut.* 878, 882, *S. C.* ſays the Judgment was reverſed, becauſe there was not any Satisfaction; for the Court were of Opinion, that this Caſe differs

* If ſeveral Drawers ſubſcribe, all are liable. *Molloy*, B. 2. C. 10. §. 16.

from

from the Caſe of two Treſpaſſers, and is rather to be reſembled to two Debtors by a joint and ſeveral Obligation, becauſe by the Cuſtom the firſt Drawer of the Bill, and every Indorſer thereof is liable to the Payment of a Sum certain to the laſt Indorſee, tho' the Action be to recover by way of Damages.

4. And not only the Drawer, Acceptor and Indorſer, are liable, but alſo, by the Cuſtom of Merchants, if one Merchant draw a Bill which is proteſted, and another hearing thereof declares, that he, for the Honour of the * Drawer, will pay the Contents, and thereupon ſubſcribes in theſe or the like Words, *I the underwritten do bind myſelf as Principal according to the Cuſtom of Merchants, for the Sum mentioned in the Bill of Exchange whereupon this Proteſt is made, &c.* This ſhall as effectually bind him as if he had been the original † Drawer; and by this the Perſon to whom the Bill is payable hath his Remedy both againſt ſuch Perſon as Surety, and alſo againſt the Principal; but the Principal or original Drawer is liable to him who thus ſubſcribes for his Honour. 3 *New Abr. Law*, 608. *Molloy*, B. 2. C. 10. §. 24. See Page 33.

5. *A.* draws a Bill upon *B.* who had Effects enough in his Hands to anſwer the Bill, which ſome Time after is proteſted; whereupon the Bill is indorſed to *A.* the Drawer, who brings an Action as Indorſee; *per Parker*, C. J. *at niſi prius*, there being Effects, the Acceptance was not *upon the Honour of the Drawer*, and ſo the Action is well brought; for when a Merchant

* So if one ſubſcribes for the Honour of him who ſubſcribes for the Honour of the Drawer. *Carth.* 129, 130. *Lutw.* 106.

† If a Bill be drawn on *J. S.* and he refuſes to accept it, or if he be out of Town, and has left no Orders or Authority to accept Bills; and that *A. B.* will accept the Bill for the Honour of the Drawer: In either of theſe Caſes, the Party to whom the ſaid Bill is payable, or his Aſſigns, ought in the firſt Place to cauſe Proteſt to be made for Non-Acceptance by *J. S.* and then he may take the Acceptance of *A. B.* for the Honour of the Drawer; for otherwiſe the Drawer may alledge that he did not draw the Bill on *A. B.* but on *J. S.* and therefore, according to the Cuſtom of Merchants, Diligence ought to be firſt uſed towards *J. S.* and by Proteſt to prove his Want of Acceptance. *Marius*, 88.

draws

draws a Bill on his Correſpondent, who accepts it, this is Payment; for it makes him Debtor to another Perſon, who may bring his Action; ſo this is ſuch a Payment as may be ſet off upon a former Action, and pleaded in Bar of ſuch Action: But if there were no Effects, the Action would not lie; for it would have been an Acceptance upon Honour only, and the Money would be recovered only to be recovered again. *Vin. Abr. Tit. Bills of Exchange* (*H.*) 12. 10 *Mod. Trin.* 10. *Anne, B. R. Lovere* v. *Laubray.*

6. A Bill was drawn at Six Days Sight, and preſented and accepted 8th of *February*, which made it payable the 14th, and the three Days of Grace brought it to the 17th, which was a *Saturday*, and the Acceptor ſtopt Payment on the *Tueſday* following, before which the Bill was not tendered. And upon this Evidence it was left to the Jury, who were of Opinion that the Drawer was diſcharged at the end of the three Days of Grace. *Stran.* 829. *Coleman* v. *Sayer.*

7. In an Action upon an inland Bill of Exchange brought by the Indorſee againſt the Drawer, it appeared the Bill was payable 14th *May*; that upon Promiſe of Payment, the Indorſee gave the Acceptor to the 18th, from thence to the 20th, thence to the 24th, and from thence to the 7th of *June*, when the Acceptor failed. And there being no Notice to the Drawer, the Chief Juſtice held it to be the Loſs of the Indorſee. *Stran.* 792. *Gee* v. *Brown.* 1 *Geo.* 2.

8. In Caſe upon a Bill of Exchange, upon the Evidence at the Trial before *Holt* Ch. J. at *Guildhall, Nov.* 23. *Mich.* 12 *W.* 3. the Caſe was thus: *A.* drew a Bill of Exchange upon *B.* payable to *C.* at *Paris*; *B.* accepted the Bill; *C.* indorſed it payable to *D. D.* to *E. E.* to *F. F.* to *G. G.* demanded the Bill to be paid by *B.* and upon Non-Payment *G.* proteſted it within the Time, *&c.* and then *G.* brought an Action againſt *D.* and it was well brought, and he recovered. Afterwards *D.* brought an Action againſt *B.* and though *D.* produced the Bill and the Proteſt, yet becauſe he could not produce a Receipt for the

Money

Money paid by him to *G.* upon the Proteſt, as the Cuſtom is among Merchants, as ſeveral Merchants upon their Oaths affirmed, he was non-ſuited. But *Holt* Ch. J. ſeemed to be of Opinion, that if he had proved Payment by him to *G.* it had been well enough. *L. Raym.* 742. *Mendez* v. *Carreroon.*

9. An Action on the Caſe was brought on a Bill of Exchange againſt the Indorſer; and it was ruled by *Holt* C. J. upon Evidence, 1ſt, That there is no Need to prove the Drawer's Hand, becauſe though it be a forged Bill, the Indorſer is bound to pay it. 2dly, *The Plaintiff muſt* * *prove that he demanded it of the Drawer, or him upon whom it is drawn, and that he refuſed to pay it; or elſe that he ſought him, and could not find him: Otherwiſe he cannot reſort to the Indorſer.* 3dly, That this was done in convenient Time; for if they ſtand and are reſponſible a convenient Time after the Aſſignment, and no Demand made, the Indorſee ſhall not charge the Indorſer. The Time of foreign Bills is three Days, and no Allowance is to be made for *Sundays* and *Holidays.* Serjeant *Wright* cited a Caſe of one *Tracy*, who ſtood a Week after the Indorſement, and the Indorſee loſt his Money; which *Holt* Ch. J. thought was too ſtrict: But ſuch Matters muſt be left to the Jury. 4thly, It is a Queſtion whether Notice muſt be given, or no; but 'tis fair to give Notice. 5thly, *That the Demand muſt be proved ſubſequent to the Indorſement*; for if it was precedent, he could only act as a Servant to the Indorſer: And ſo the Demand was ſufficient to charge the Indorſer. 6thly, If a Man indorſes his Name upon the Back of a Bill Blank, he puts it in the Power of the Indorſee to make what Uſe of it he will; and he may uſe it as an Acquittance to diſcharge the Bill, or as an Aſſignment to charge the Indorſer. 7thly, In Caſes of Bills purchaſed at a Diſcount, this is the Difference: If it be a Bill payable to *A.* or Bearer, it is an abſolute Purchaſe; but if to *A.* or Order, and it is indorſed

* See Parag. 10, 11, 12, 13, 14, 15, 16, and 17, immediately following.

blank,

blank, and filled up with an Aſſignment, the Indorſer muſt warrant it as much as if there had been no Diſcount. 1 *Salk.* 127. *Lambert* v. *Pack.*

10. *R.* drew a Bill payable to *O.* or Order. *O.* indorſes it to *L.* and *L.* brings an Action for the Money againſt *O.* and by *Holt* it was ſaid, *That he ought to prove, that he had demanded, or endeavoured to demand his Money of* R. *before he could ſue* O. *on his Indorſement: So if the Bill was drawn on any other Perſon payable to* O. *or Order, and the Demand to intitle* L. *to his Action ought to be after the Indorſement.* 2. *O.* indorſed this Bill blank to *L.* by writing his Name only; and therefore it was urged, that this was a Sale of the Bill, and the Indorſement could not ſubject the Indorſer to an Action; but, *per Holt*, the Indorſement, though upon Diſcount, will ſubject the Indorſer to an action; becauſe it is a conditional Warranty of the Bill, and makes a new Contract, in caſe the Perſon, on whom it was drawn, do not pay. 3. *per Holt:* If a Man indorſes a Bill blank to *B.* he puts it in the Power of *B.* to ſuperſcribe what *B.* pleaſes. 4. If the Indorſee does not demand the Money payable by the Bill, of the Perſon on whom it is drawn, in a convenient Time, and he fails afterwards, the Indorſer is not liable. 5. If the Action be brought againſt the Indorſer, it is not neceſſary to prove the Hand of the Drawer; for though it be forged, the Indorſer is liable. 12 *Mod.* 244. 11 *W.* 3. *Lambert* v. *Oakes.*

11. *R.* ſigned a Note under his Hand payable to *Oakes* or his Order. *Oakes* indorſed it to *Lambert*; upon which *Lambert* brought the Action for the Money againſt *Oakes*. *Per Holt* Chief Juſtice, he ought to prove that he had demanded, or done his Endeavour to demand, this Money of *R.* before he can ſue *Oakes* upon the Indorſement. *The ſame Law, if the Bill was drawn upon any other Perſon payable to* Oakes *or Order.* And the Demand to intitle *Lambert* to his Action muſt be after the Indorſement. 2. *Oakes* had indorſed this Bill back to *Lambert*, *viz.* by the writing his Name only upon Diſcount: And there-

fore it was urged by Mr. *Northey*, that this was a plain Sale of the Bill, and the Indorſement ſhall not ſubject the Indorſer to an Action; becauſe the Bill cannot be ſold to intitle the Vendee to take the Benefit of it, without Indorſement; and the Practice among Merchants is ſo. But *Holt e contra:* For their Practice cannot alter the Law. And the Indorſement, though upon Diſcount, will ſubject the Indorſer to an Action; becauſe it is a conditional Warranty of the Bill, and makes a new Contract in caſe the Perſon upon whom it was drawn, does not pay it. 3. *Per Holt* Chief Juſtice. If *A.* indorſes a Bill blank to *B.* he thereby puts it in the Power of *B.* to overwrite what he pleaſes. 4. If the Indorſee does not demand the Money payable by the Bill of the Perſon upon whom it is drawn, in convenient Time, and afterwards he fails, the Indorſer is not liable. 5. If the Action be brought againſt the Indorſer it is not neceſſary to prove the Hand of the Drawer; for though it be forged, the Indorſer is liable. *L. Raym.* 443. 11 *W.* 3. *Lambert* v. *Oakes.*

12. Action upon the Caſe for 170*l.* 10*s.* The Plaintiff declared ſeveral ways, *viz.* 1ſt, Upon two Bills of Exchange againſt the Indorſer. 2dly, Upon a *Mutuatus.* 3dly, An *Indebitatus Aſſumpſit* for Money laid out for the Uſe of the Defendant. Upon *Non Aſſumpſit* pleaded, the Caſe upon Evidence was: *Moor*, a Goldſmith, ſubſcribed two Notes payable to the Defendant; the Defendant on the 19th of *October* indorſes theſe two Notes, and gives them and eight others to one *Zouch*, to whom he was indebted; *Zouch*, the 19th of *October* between the Hours of Eleven and Twelve, brought theſe Notes to the Plaintiffs, being Goldſmiths, and they accepted them, and gave *Zouch* other Bills, and ſome Money; and afterwards, the ſame Day, the Plaintiffs received Money upon other Bills of the ſaid *Moor*, and might have had the Money due upon theſe two Bills, if they had been demanded; but in the Night following, about Midnight, *Moor* broke, and ran away: And whether the

Plaintiffs

Plaintiffs or Indorſer ſhould loſe this 170*l.* 10*s.* was the Queſtion.

And the firſt Queſtion was, Whether the Acceptance of theſe Bills, in Satisfaction for ſo much Money, be a good Diſcharge of the Indorſer? And *Holt* Chief Juſtice held, that Goldſmiths Bills were governed by the ſame Laws and Cuſtoms as other Bills of Exchange; and every Indorſement is a new Bill; and ſo long as a Bill is in Agitation, and ſuch Indorſements are made, all the Indorſers, and every of them, are liable as a new Drawer. That by the Law generally every Indorſer is always liable as the firſt Drawer, and cannot be diſcharged without an Actual Payment, and is not diſcharged by the Acceptance of the Bill by the Indorſee; but by the Cuſtom this is reſtrained, *viz.* the Acceptance is intended to be upon this Agreement, *viz. That the Indorſee will receive it of the firſt Drawer if he can; and if he cannot, then that the Indorſer will anſwer it; as if the firſt Drawer be inſolvent at the Time of the Indorſement, or upon Demand refuſes to pay it, or cannot be found.* And the Indorſer is not diſcharged without actual Payment, until there is ſome Neglect or Default in the Indorſee; as if he does not endeavour to receive it in convenient Time, and then the firſt Drawer becomes inſolvent.

The ſecond Point was, What ſhall be thought convenient Time to endeavour to receive ſuch Bills? *Et per Holt* Chief Juſtice, in Caſe of foreign Bills, he upon whom it is drawn hath three Days to pay it, and the Indorſee of ſuch foreign Bill need not demand Payment until the ſaid three Days be expired; and if he, upon whom the Bill is drawn, become inſolvent in the ſaid Time, the Indorſer is chargeable; and after the three Days, the Indorſee may proteſt it; and it ſeems the ſame Time ought to be allowed for inland Bills, though it was urged, that for foreign Bills a longer Time was required; in reſpect the Drawee was to receive Advice from the Drawer.

And the Chief Juſtice in his Direction to the Jury ſaid, That what ſhould be thought convenient Time

ought to be according to the Uſage among Traders in ſuch Caſes, and upon all the Circumſtances: That the Plaintiffs had ten Bills delivered to them together; and that perhaps they had other Affairs that hindered them from going preſently to receive theſe two Bills; and that they received two other Bills the ſame Day. The Chief Juſtice left it to the Jury to conſider, whether the Time in this Caſe were convenient Time or not; and if the Plaintiff had convenient Time to receive his Money, then to find for the Defendant, otherwiſe for the Plaintiff. And they upon Conſideration found for the Plaintiff; upon which the Plaintiff prayed to take the Verdict upon the *Indebitatus Aſſumpſit*. *Et per* C. J. You cannot take the Verdict upon any Part of the Declaration, but that to which Evidence was given, and here it will be good, if found upon the Bills of Exchange; but if the Evidence be applicable to any other Part of the Declaration, you may take it upon any ſuch Part, to which the Evidence is applicable. And becauſe *Zouch* had ſworn that he had received the Benefit of, and had been ſatisfied with, the Bill he took of the Plaintiff, by which the Defendant was diſcharged againſt *Zouch*, the Verdict was taken upon the *Indebitatus Aſſumpſit* for Money laid out for the Defendant's Uſe; and it ſeems the Indorſement by the Defendant to the Plaintiffs was good Evidence of a Requeſt to pay the ſaid Money to *Zouch*. Now Exception was taken that one Bill was payable to the Defendant only, without the Words, *or to his Order*, and therefore not aſſignable by the Indorſement; and the Chief Juſtice did agree that the Indorſement of this Bill did not make him that drew the Bill chargeable to the Indorſee; for the Words, *or to his Order*, give Authority to the Plaintiff to aſſign it by Indorſement; and 'tis an Agreement by the firſt Drawer that he would anſwer it to the Aſſignee: But the Indorſement of a Bill which has not the Words, *or to his Order*, is good, or of the ſame Effect betwixt the Indorſer and the Indorſee, to make the Indorſer chargeable to the

Indorſee.

Indorſee. *Salk.* 131. *Hill et al.* v. *Lewis.* *Skin.* 410. *S. C.*

13. A Bill of Exchange being made payable to *A.* or Order, *A.* indorſes it to *B.* *B.* cannot ſue *A.* unleſs he firſt endeavours to find out the firſt Drawer to demand it of him; for the Indorſer is only a Warrantor for the Payment of the Drawer, and therefore liable only on his Default; and ſuch Endeavour muſt be ſet forth in the Declaration. 1 *Salk.* 126. *Anon.*

14. Caſe upon a foreign Bill of Exchange by the Indorſee againſt the Indorſer; and on general Demurrer it was objected, that they had not ſhewn a Demand upon the Drawer, in whoſe Default only it is that the Indorſer warrants: And becauſe this was a Point unſettled, and on which there are contradictory Opinions in *Salk.** 131 and 133, the Court took Time to conſider of it; And on the ſecond Argument they delivered their Opinions that the Declaration was well enough. The Deſign of the Law of Merchants, ſaid the Court, in diſtinguiſhing theſe from all other Contracts, by making them aſſignable, was for the Convenience of Commerce, that they might paſs from Hand to Hand in the way of Trade, in the ſame Manner as if they were *Specie*. Now to require a Demand upon the Drawer will be laying ſuch a Clog upon theſe Bills, as will deter every Body from taking them. The Drawer lives abroad perhaps in the *Indies*, while the Indorſee has no Correſpondent to whom he can ſend the Bill for a Demand, or, if he could, yet the Delay would be ſo great that no Body would meddle with them. Suppoſe it was in caſe of ſeveral Indorſements, muſt the laſt Indorſee travel round the World before he can fix his Action upon the Man from whom he received the Bill? In

* See P. 50. Parag. 12.---The Caſe in *Salk.* 133. is thus: Action on a promiſſory Note againſt the Second Indorſer; and the Plaintiff declared without an Averment, that the Money was demanded of the Drawer, or the firſt Indorſer. And this was held good upon Motion in Arreſt of Judgment; for the Indorſer charges himſelf in the ſame Manner as if he had originally drawn the Bill. 1 *Salk.* 133. *Trin.* 9 *Anne.* *Harry* v. *Perrit.*

common Experience every body knows, that the more Indorſements a Bill has, the greater Credit it bears; whereas if thoſe Demands were all neceſſary to be made, it muſt naturally diminiſh the Value, by how much the more difficult it renders the calling in the Money. As to the Notion that has prevailed, that the Indorſer † warrants only in Default of the Drawer, there is no Colour for it; for every Indorſer is in nature of a new Drawer, and at *Niſi prius* the Indorſee is never put to prove the Hand of the firſt Drawer, where the Action is againſt the Indorſer. The requiring a Proteſt for Non-Acceptance is not becauſe a Proteſt amounts to a Demand; for it is no more than a giving notice to the Drawer to get his Effects out of the Hands of the Drawee, who by the other's drawing is ſuppoſed to have ſufficient wherewith to ſatisfy the Bill. *Stran.* 441. *Trin.* 7. *Geo.* 1. *Bromley* v. *Frazier.*

15. In Action by the ſecond Indorſee of a Bill of Exchange againſt the firſt Indorſer, it was held ſufficient to ſay the Drawer had not paid it, without ſhewing a Demand. *Stran.* 515. *Caſ.* 8 *Geo.* 1. *Lawrence* and *Jacob.*

16. An Action was brought againſt the Indorſer of a Bill of Exchange. The Bill was given in Evidence, with an Indorſement only of the Defendant's Name; which, as was argued for the Defendant, was not an Indorſement that would ſubject the Defendant to an Action; to which the Plaintiff's Counſel agreed, but prayed that they might have the Bill back, to write over the Indorſement *pay the Contents to* J. Thead; which was oppoſed by the Defendant's Counſel, urging that if the Plaintiff had any Right ſo to do, he ought to have done it before the Cauſe came on, and that he ought not to be admitted to do it now.

Lee Chief Juſtice. I believe this hath been often allowed; and I am of Opinion that the Plaintiff ought to be let in now to do it. The Bill was then

† See the preceding Caſe.

delivered

delivered back to the Plaintiff, and the Words above were wrote over the Defendant's Name.

* It was then objected that the Plaintiff himself appeared to be an Indorser of the Bill, and therefore the Property out of him; so that he could not maintain this Action. Upon which it was prayed for the Plaintiff, that they might have the Bill back again, to strike out the Indorsements subsequent to the Defendant's: which was opposed by *Strange*, Solicitor General, averring that he had remembered a like Case at *Nisi Prius* before Lord *Hardwicke*, where, though he allowed the Bill to be delivered back, to have the Indorsement filled up; yet he refused to let it be delivered back, to have the subsequent Indorsements struck out.

To which, *Marsh* for the Plaintiff said, that the subsequent Indorsement being in Blank, amounted to nothing; it might be as a Witness, *&c.* and would not shew a Transfer of the Property; which appeared from the Necessity of having the Purport of the Defendant's Indorsement wrote over it. But *Strange* said, that he was ready to submit this to the Jury, whether such an Indorsement were an Assignment of the Property or not.

Lee, Chief Justice, declared his Opinion, that he thought the Plaintiff ought to have this Advantage now; and the Bill was therefore again delivered back to the Plaintiff, that the Indorsements made subsequent to that made by the Defendant might be struck out; which being done and the Bill read, the Sollicitor General took this further Objection, that by the Defendant's Indorsement, as it is now made to pay the Contents to *J. Thead*, and the Record is to *Thead* or Order; so it is not the same Bill. But upon looking into the Record, it appeared to agree with the Indorsement.

* This Case is reported in *Strange* thus: When the Note was delivered in, the Plaintiff's Name was upon it: And the Chief Justice permitted it to be struck out in Court, it being an Indorsement in Blank. *Stran.* 1103.

It was then urged for the Defendant, that the Plaintiff muſt prove a Demand upon the Drawer, and his Neglect to do which was ſubmitted to by the Plaintiff's Counſel without Argument. Upon which it appeared in Evidence, that the Plaintiff had, by his Servant, from time to time applied to the Drawer for ſix Weeks together, and was put off; that at the End of ſix Weeks, the Drawer became a Bankrupt, and the Plaintiff not being able to ſhew that he had given Notice to the Indorſer of the Default in the Drawer, and the Witneſs confeſſing that he knew of no Notice being given to the Indorſer of his Neglect of Payment in the Drawer, it was taken without Argument, to be a Diſcharge of the Indorſer, and the Plaintiff was nonſuited. *Dict. Tr.* and *Com.* 262. *Mich.* 12 *Geo.* 2. *Thead* and *Lovell.*

17. An Action was brought by the Plaintiff againſt the Defendant as Indorſer of an Inland Bill of Exchange for 100 *l.* drawn at forty Days Sight by one *Carrick* upon one *Dodd*, in favour of the Defendant, who indorſed it to the Plaintiff. *Dodd* accepted the Bill, but did not pay it; upon which it was proteſted by the Plaintiff. All which was proved to the Jury; but it did not appear that the Drawer had Notice of the Non-Payment, before this Action was brought, or that any Application was firſt made to him for Payment: And this Matter being objected by the Defendant's Counſel, and they inſiſting that for want of ſuch Notice or Demand, or due Diligence uſed, for that Purpoſe, the Plaintiff muſt be non-ſuited, the Jury gave a Verdict for the Plaintiff ſubject to the Opinion of the Court. And as this was a Point unſettled, and many contradictory Opinions thereon, as appears from the ſeveral preceding * Caſes, the Court took Time to conſider of it; and this Term unanimouſly were of Opinion that in the preſent Caſe, it was not neceſſary to demand the Money from the Drawer, or to uſe any Diligence for that Purpoſe, or to give him Notice of Non-Payment by the Drawee.

* From P. 48. Parag. 9. inclusive.

That

That a Bill of Exchange was an Order or Command given by the Drawer on or to the Drawee (who has, or is ſuppoſed to have, Effects of the Drawer in his Hands) to pay a Sum of Money to a third Perſon; that when the Bill is accepted, the Drawee is become the principal Debtor, and the Drawer is liable only in Default of the Drawee, and if due Diligence be not uſed to get the Money from the Acceptor or Drawee, and Notice of his Non-Payment given in convenient Time to the Drawer, the Drawer ſhall not be liable; for if it ſhould be otherwiſe, and the Perſon upon whom the Bill was drawn ſhould become inſolvent, without ſuch due Diligence uſed by the Payee, or Perſon to whom the Bill is payable, to demand Payment from the Drawee, or without his giving the Drawer timely Notice of the Non-Payment, then would the Drawer unreaſonably ſuffer through the Laches of the Payee; having no Intimation to call in his Effects before the Drawee became inſolvent.

That when a Bill of Exchange is indorſed by the Perſon to whom it is made payable, it is become a new Bill, and the Indorſer is in the Place of the Drawer; and therefore if the Indorſee uſes due Diligence to get the Money from the Acceptor, and is refuſed Payment, then the Indorſer, who has put himſelf in the place of the original Drawer, upon Notice of ſuch Non-Payment, is become liable immediately, but not otherwiſe; in like Manner and for the ſame Reaſon that the original Drawer would have been, in the like Caſe, had there been no Indorſement: And the Indorſee is not obliged to make any Demand upon the Drawer, or to give him any Notice; for he does not truſt the Drawer (who may not perhaps be known to him). The Indorſer is his Debtor, and not barely a * Warrantor or Security for the Payment of the Money.

That there was no Difference between foreign and inland Bills of Exchange, except in the *Degree* of the Conveniency; and as to foreign Bills, this Matter

* See Page 53.

has

has been determined before in *Strange* †, 441. The Reaſon of the Judgment there given was for the Inconveniencies that would enſue to Commerce in general, from the Diſcredit it would bring upon Bills of Exchange to be thus clogged with a Neceſſity of giving ſuch Notice, and making a Demand on the original Drawer. Now every Inconvenience attending a foreign Bill holds to a *great Degree*, though not *equally* in reſpect to an Inland Bill, if a Perſon ſhould be obliged perhaps in ſeveral remote Parts of the Kingdom to enquire after and find out the Drawer; and therefore in this Caſe it was not neceſſary to prove any Enquiry after, or Demand upon, the original Drawer, or any Notice of the Non-Payment to him.

That what gave Riſe to the ſeeming Contrariety of Opinions upon this Point is the confuſed Manner in which Caſes upon inland Bills of Exchange and Promiſſory Notes are reported and blended together. There is a ſtrong Reſemblance between a Promiſſory Note indorſed and an inland Bill of Exchange, and the Law ſhould be ſettled on the Analogy between them.——Whilſt a Promiſſory Note remains in its original State without Indorſement, it bears no Reſemblance to an Inland Bill of Exchange; but when it is indorſed to a third Perſon the Similitude begins; for then the Maker of the Note is in the ſame Situation with the Drawee or Acceptor of the Bill of Exchange; and the Indorſee of either Bill or Note muſt demand the Money from the Acceptor of the Bill or Maker of the Note before an Action can be brought againſt the Indorſer; that this was determined with reſpect to the Maker of a Note in the Court of Common Pleas, as cited in *Strange* *, 1087; that where *Holt*

† See P. 53. Parag. 14.

* This Caſe in *Strange* is thus: A Note was payable 27th *December*, 1732; the Drawer ſhut up his Houſe, and went away the *November* before. And the Queſtion was, whether in general a Demand upon the Drawer is neceſſary before the Indorſer can be charged; and if it was, whether in this Caſe the Plaintiff had ſhewn ſufficient in proving the ſhutting up the Houſe.

A

Holt ſaid in † *Oakes*'s Caſe reported in Ld. *Raym.* 443, *that the Indorſee muſt demand or endeavour to demand the Money from the Maker of the Note before he can ſue the Indorſer*; and added further, "The ſame Law if the Bill was drawn upon any other Perſon payable to *O.* or Order." He does not mean that the Demand muſt be firſt made on the Drawer of the Bill of Exchange, before the Indorſee can ſue the Indorſer, but upon the Perſon who is in the ſame ſituation with the Drawer (or Maker) of the Promiſſory Note, who is the real Debtor, and this is the Acceptor of the Bill of Exchange.

That this Opinion of *Holt*, which, thus conſtrued, agreed with the preſent Opinion of the Court, was miſunderſtood and confuſed in * *Salk.* 127 († which is manifeſtly a wrong Collection from *Holt*'s Opinion in *Oakes*'s Caſe) where it is ſaid that the Indorſee of a Bill of Exchange muſt, in an Action againſt the Indorſer, prove, *that he demanded the Money from the Drawer, or him upon whom it is drawn, and that he refuſed to pay it, or elſe that he ſought him and could not find him*; that there was the ſame Miſtake in ‡ 12 *Mod.* 244; and that the confuſed and ſhort Notes taken of theſe and other Caſes, were the true Occaſion of all the Contrariety of Opinions to this Point.

And that upon the whole, in an Action by the Indorſee of an inland Bill of Exchange againſt the Indorſer, he muſt prove a Demand, or due Diligence uſed to make it, upon the Acceptor, or Perſon upon whom the Bill was drawn; And in an Action by the Indorſee of a Promiſſory Note againſt the Indorſer, he muſt prove a Demand made, or due Diligence

As to the firſt, the Chief Juſtice ruled, that a Demand on the Drawer was neceſſary, as was determined in *C. B. Paſch.* 4 *Geo.* 2. on great Debate. And in this particular Caſe, he held the Plaintiff had not gone far enough, but ought to ſhew, that he had enquired after the Drawer, or attempted to find him out.

‡ See P. 49. Parag. 11. * See P. 48. Parag. 9.

† Mr. *Viner* ſays, that the Caſe of *Lambert* v. *Pack* (1 *Salk.* 127.) ſeems to be the ſame with that of *Lambert* and *Oakes* (12 *Mod.* 244) and *Lambert* and *Oakes*. (*L. Raym.* 442.) which are one and the ſame. ‡ See P. 49. Parag. 10.

uſed

uſed to make it, from the Maker of the Note. In the King's Bench, *Michaelmas* Term 1758. *Heylins* and *Adamſon*.

18. If the Indorſee of a Bill accepts but Two-Pence from the Acceptor, he can never reſort to the Drawer. *L. Raym.* 743. *Taſſel* and *Lee* v. *Lewis*.

19. A Bill of Exchange was drawn upon the Plaintiff at Leghorn which he accepted: But by the Law there, if a Bill be accepted and the Drawer fails, and the Acceptor hath not ſufficient Effects of the Drawer in his Hands, at the Time of the Acceptance, the Acceptance becomes void. And this happening to be the Plaintiff's Caſe, in order to diſcharge himſelf of this Acceptance, he inſtituted a Suit at *Leghorn*, and his Acceptance was thereupon vacated by a Sentence in that Court. Afterwards the Plaintiff returned to *England* and was ſued here at Law upon this Bill, and thereupon he exhibited his Bill in the Court of Chancery for an Injunction and Relief.

King, Lord Chancellor, was clearly of Opinion, that this Cauſe was to be determined according to the local Laws of the Place where the Bill was negotiated: And the Plaintiff's Acceptance of the Bill having been vacated, and declared void by a competent Juriſdiction; he thought that Sentence was concluſive, and bound the Court of Chancery here. And in this Caſe a perpetual Injunction was granted to enjoin the Defendant from ſuing upon this Bill. 22d *Nov.* 1720. 2 *Eq. Abr.* 524. *Stran.* 733. *Burrow* v. *Jemino*.

20. In an Action by the Indorſee of a Bill of Exchange againſt the Acceptor, it was held not to be neceſſary to prove the Hand of the Drawer: And the Plaintiff reſted on the Proof of the Acceptance. The Defendant offered to prove it a forged Bill by calling Perſons who were acquainted with the Hand of the Drawer, and would ſwear they did not believe it to be his Hand. But the Chief Juſtice would not admit this, from the Danger to negotiable Notes, and becauſe a Man might with Deſign write contrary to his uſual Method. And he was ſtrongly inclined, that even

actual

actual Proof of Forgery would not excuſe the Defendant againſt his own Acceptance, which had given the Bill a Credit with the Indorſee. *Stran.* 946. *Jenys* v. *Fawler.*

21. Upon a Caſe made at *Niſi Prius* before *Pratt* Chief Juſtice, it appeared that the Plaintiff had declared on an Indorſement made by *William Abercrombie*, whereby he appointed the Payment to be made to *Louiſa Acheſon* or Order; and upon producing the Bill in Evidence, it appeared to be payable to *Abercrombie* or Order; but the Indorſement was only in theſe Words, "Pray pay the Contents to *Louiſa Acheſon*;" and therefore it was objected that the Indorſement not being *to Order*, did not agree with the Plaintiff's Declaration. But upon Conſideration the whole Court were of Opinion it was well enough, that being the legal Import of the Indorſement, and that the Plaintiff might upon this have indorſed it over to another, who would be the proper Order of the firſt Indorſer. Judgment for the Plaintiff. *Stran.* 557. *Acheſon* v. *Fountain.*

22. *Huſſey* brought *Aſſumpſit* againſt the Defendant *Jacob*, upon his Acceptance of a Bill of Exchange drawn upon him by the Lord *Chandos* according to the Cuſtom of Merchants. The Defendant *Jacob* pleaded, that the Lord *Chandos* played at Hazard with the Plaintiff *Huſſey*, and loſt to him at one and the ſame Time 150 *l.* and that for Payment and Security of the ſaid Sum of 150 *l.* loſt to the Plaintiff, he drew this Bill of Exchange upon the Defendant payable to the Plaintiff, which the Defendant accepted; and then he pleads the Statute of Gaming of 16 *Car.* 2. *Cap.* 7. by which this Bill of Exchange, being given for Security of the ſaid Sum gained at play, became void, *&c.* The Plaintiff demurs. And Sir *Bartholomew Shower* for the Plaintiff argued, 1ſt, That this was not within the Statute; for though he well agreed, that an Action could not be maintained againſt the Lord *Chandos* himſelf for this Money by reaſon of this Statute; yet here a third Perſon had made himſelf

ſelf chargeable by his own collateral Engagement, *viz.* by the Acceptance of the Bill, which ſeems to be out of the Intent of the Act; the *Aſſumpſit* of the Acceptor being altogether different from that of the Drawer; for altho' the Conſideration of the Drawer was the Money won at Play, yet the Conſideration of the Acceptor was the Honour of the Drawer, or his Effects in the Hands of the Acceptor. And the Defendant has not pleaded, that the Acceptance was *pro Solutione et Securitate* of it. Beſides, that it would be of very ill Conſequence, to ſuffer the Defendant to avoid his own Bill and Acceptance by this Means; for a Bill of Exchange once accepted by a reſponſible Man, is of ſuch Credit among Traders, that it paſſes as current as ready Money, and is negotiated from one to another through all *Europe*, and exchanged upon valuable Conſideration, till it comes back to *London*. But if the firſt Acceptor ſhall be admitted to avoid it by the Statute of Gaming, this will diminiſh the Credit of Bills of Exchange, and will be a great Check to Merchandizing. But to this it was anſwered and reſolved by the Court, that if a collateral Engagement of a third Perſon ſhall not be within the Intent of the Act, the Act will be very eaſily evaded, and in Effect rendered uſeleſs. And therefore all the Court was of Opinion, that if a Man has loſt Money at gaming, *viz.* more than a 100 *l.* at one Time, and he procures *J. S.* to be bound for the Payment of it, or as the principal Caſe is, gives a Bill of Exchange for the Payment of it which is accepted, both theſe Securities are void by the ſaid Act. But if he who wins being indebted to the Stranger, procures him who loſes to bind himſelf to the Stranger for the Payment of the Money due by him who wins to the Stranger, in Conſideration of a Diſcharge of the Money which he hath loſt at Gaming, this Bond which he makes to the Stranger is not within the Act, becauſe it is made for a juſt Debt. So in this principal Caſe, if the Bill of Exchange had been afterwards aſſigned for a valuable Conſideration, the Honeſty of

this Aſſignment had purged the original Canker, and rendered it good enough. As where a fraudulent Conveyance is aſſigned upon valuable Conſideration, this Fraud is purged. (But Sir *Batholomew Shower* ſaid, that it was ſtrange, that the Party by his Aſſignment could make that good which was void *ab initio.*) But in this caſe at Bar, the Money loſt at Play is the Foundation of the whole, which is ill, and therefore the Bill and the Acceptance, which are the Superſtructure, are ill alſo. Note, This is called an Acceptance for the Honour of the Drawer, when a Stranger upon whom the Bill was not drawn, in reſpect of the Drawer, and having no Effects of his in his Hands, accepts it.

2. It was objected for the Plaintiff, that the Defendant has not brought himſelf within the Statute; for he has not alledged that the Lord *Chandos* and the Plaintiff played upon Tick or Credit according to the Words of the Act, which is a penal Law and ought to be purſued ſtrictly; for ſuch Gaming was not prohibited by the common Law. *Sed non allocatur*; for *per Curiam* the giving of the Bill of Exchange makes it evident, that they did not play for ready Money, but for Credit.

3. It was objected, that the Cuſtom which was the ground of the Action, is not anſwered by the Plea. *Sed non allocatur.* For *per Curiam* it is confeſſed and avoided. It is admitted to be good generally, but not with this Ingredient. And by *Holt*, Chief Juſtice, though theſe Declarations ſeem to be grounded upon Cuſtom, yet this Cuſtom is properly the common Law. For the Acceptance of the Bill amounts to a Promiſe in Law to pay it, and this Promiſe is grounded upon the Conſideration of Trade.

4. It was objected, that the Defendant ſhould have pleaded the general Iſſue, and given this Matter in Evidence; for the Statute ſays that ſuch Contract ſhall be void; then nothing is due to the Plaintiff, and conſequently the Defendant ſhould have pleaded the general Iſſue; for in effect this Plea does but amount

amount to it. *Sed non allocatur:* for, *per Curiam*, where the Defendant has ſpecial Matter, conſiſting not only of bare Matter of Fact, but intermixed with Matter of Law, which will avoid the Charge or Action of the Plaintiff, he is not obliged to plead the general Iſſue, but may plead it ſpecially. For otherwiſe he ſhould be obliged to commit a Point of Law to a Jury who is ignorant of it, which would be abſurd. Therefore in Debt upon a * Bond made by a *Feme Coverte*, while ſhe was *Coverte de Baron*, the Defendant may plead the ſpecial Matter, or *non eſt factum*, and give it Evidence. See 3 *Cro.* 871, 900. 4 *Co.* 13, 14. Lord *Cromwell*'s Caſe. *Hob.* 127. *Poph* 65. *Dyer*, 121. So in this Caſe the Defendant might have pleaded the general Iſſue, and have given this Matter in Evidence, or he might do as he has done, *viz.* plead it ſpecially. And therefore Judgment was given by the whole Court for the Defendant.

Note, In this Caſe, the Caſe of one *Roſindale* lately adjudged was cited, where the Caſe in effect was thus: *A.* covenanted with *B.* that the Horſe of *A.* ſhould run with the Horſe of *B.* four Heats for 30*l.* each Heat; and in Covenant brought for the 120*l.* having won every Heat; the Defendant pleaded the Statute of Gaming; and upon Demurrer it was objected, that this was not within the Statute; becauſe the running of each Heat for 30*l.* was a diſtinct and ſingle Wager; and then being but for 30*l.* the Statute did not extend to it, the Sum prohibited by the Statute being 100*l.* or more. But it was adjudged that it was void for the Whole; for it was but one intire and ſingle Contract, though the Horſes were to run four Times; and then the Sum won

* *Aſſumpſit* againſt a Woman; ſhe pleads that ſhe is, and at the Time of the *Aſſumpſit* was a *Feme Coverte*. The Plaintiff demurred ſpecially, and ſhewed for Cauſe, that this amounted to the general Iſſue. But adjudged for the Defendant, for this Matter of Fact is intermixed with Matter of Law, which will excuſe the Defendant. *Mich.* 8 *W.* 3. *B. R.* 1696. *James* v. *Fowkes.*

amounting

amounting to 120 *l.* it was expreſsly prohibited by the Act. *S. C.* 3 *Keb.* 254, 259. *L. Raym.* 87. *Trin.* 8 *W.* 3. *Huſſey* and *Jacob.* 1 *Salk.* 344. *S. C.*

23. If *A.* draws a Bill of Exchange payable to *B.* for the Uſe of *C*; and *B.* for a valuable Conſideration indorſes it over to *D*; *D.* may bring an Action againſt *A.* the Drawer; and he cannot plead that the Money was extended in his Hands at the Suit of the King, for a Debt due from *C.* for *C.* being only *Ceſtui que Truſt*, had only an equitable Intereſt, and no * legal Remedy for the Money; and *B.* is only reſponſible in Equity to *C.* for the Breach of Truſt. 3 *New Abr. Law*, 608. *Carth.* 5. *Skin.* 264. 1 *Show*, 5. *S. C. Evans* v. *Cramlington*, adjudged and affirmed in the *Exchequer Chamber.* 2 *Ven.* 309. *S. C.* adjudged, it appearing that the Bill was indorſed before any Seizure or Writ of Extent iſſued out; and an Indorſement on ſuch a Bill was good, by the Cuſtom of Merchants.

24. *A.* gave *B.* a Bill of Exchange for Value received. *B.* aſſigns it to *C.* for an honeſt Debt; *C.* brings an *Indebitatus Aſſumpſit* on this Bill againſt *A.* and had Judgment; on which *A.* brings his Bill to be relieved in Equity againſt this Judgment; becauſe there was really no Value received at the giving this Bill, and *C.* would have no Prejudice, who might ſtill reſort to *B.* upon his original Debt: It was anſwered, that *A.* might be relieved againſt *B.* or any claiming as Factor or Servant of, or to the Uſe of *B.* But the Chancellor held, that *C.* being an honeſt Creditor, and coming by this Bill fairly for the Satisfaction of a juſt Debt, he would not relieve againſt him; becauſe it would tend to deſtroy Trade, which is carried on

* So in Debt on a ſingle Bill made to *A.* to the Uſe of him and *B.* the Defendant pleads a Releaſe made to him by *B.* and on Demurrer, it was adjudged for the Plaintiff without Difficulty: for *B.* is no Party to the Deed, and therefore can neither ſue, nor releaſe it; but it is an equitable Truſt for him, and ſuable in the Chancery, if *A.* will not let him have Part of the Money; and the Book of *Ed.* 4. cited, that he might releaſe in ſuch Caſe, was denied to be Law. 2 *Lev.* 255. *Oſly* v. *Ward.*

every where by Bills of Exchange, and he would not leſſen an honeſt Creditor's Security. *Comyns*, 28. *Anon.*

25. In Action brought upon a Bill of Exchange, made payable to the Order of the Plaintiff, the Declaration ſet forth, that the Defendant by his Acceptance, became liable to pay the Plaintiff, *ſecundum conſuetudinem Mercatorum.* Upon this Declaration there is a Demurrer.

It was urged for the Defendant, that the Plaintiff had only an Authority to indorſe the Bill, and then the Indorſee might maintain an Action; but that the Plaintiff was not intitled to receive the Money. It was compared to the Caſe of a Deviſe, that Executors ſhall ſell Land, where the Executors have only an Authority to ſell, but no Intereſt; and therefore immediately upon Sale, the Vendee is in, not from the Executors, but under the Will.

On the other Side it was ſaid, that if this was Law, Multitudes of Bills of Exchange would be overthrown: That, by the Cuſtom of Merchants, there is no Difference between payable to the Order of ſuch a One, and payable to ſuch a One or Order; and that the Cuſtom is confeſſed by the Demurrer: That the ſame Strictneſs and Nicety are not required in the Penning of Bills current between Merchant and Merchant, as in Deeds, Wills, *&c. Court.* Even in Caſe of Land, a Grant or Deviſe of the Profits of Land carries the Land: Order implies Property; no Difference between having a Power to diſpoſe of Money, and having the Money itſelf. What is an Order, but an Authority to appoint the Payment of it? which the Plaintiff here does to himſelf. Judgment for the Plaintiff. *Lucas*, 286. ——— v. *Ormſton. B. R.* 1 *Geo.* 1.

26. *A.* drew a Bill of Exchange upon *B.* payable to *C.* Then *B.* accepts the Bill. *C.* indorſes it to *D.* Now by this Indorſement by *C.* to *D. B.* is diſcharged of any Payment as to *C.* and if *D.* indorſes it over to *E.* then *B.* is diſcharged of any Payment

to

to *D.* But if *D.* pays the Money to *E.* then *D.* by this Payment becomes again intitled to receive the Money of *B.* and at ſuch Time no other, whether *E.* or *C.* is intitled to bring any Action againſt *B.* but *D.* only. So if *C.* pays the Money to *D.* then *B.* is diſcharged as to *D.* but *C.* becomes really intitled, and *B.* is again intitled as to him, but diſcharged againſt *D.* and *E.* See *Lutw.* 885. b. 888. b. 1 *Jac.* 2. in *Cam. Scacc. Death* v. *Serwonters. Vin. Abr. Tit. Bills of Exchange.* (H) 1.

SECT. X.

Of the Action and Remedy on a Bill of Exchange; and the Manner of declaring and pleading thereon.

1. IT ſeems agreed, that againſt the Drawer an Action of * *Debt*, or a general † *Indebitatus Aſſumpſit*, will lie; for he having received the Money, the Law raiſes a Contract, and lays him under an Obligation to pay it; but it hath been adjudged, that neither an Action of Debt, nor an *Indebitatus Aſſumpſit* will lie againſt the Acceptor of a Bill of Exchange, and therefore the Remedy againſt him muſt be by a ſpecial Action on the Caſe founded on the Cuſtom of Merchants; for the Acceptance is only a collateral Engagement to pay the Debt for another, in the ſame Manner as a Promiſe by a Stranger to pay, *&c.* if the Creditor will forbear his Debt. 3 *New Abr. Law*, 614. *Hard.* 485. *Hill.* 20 and 21 *Car.* in the Ex-

* *Debt* is an Action that lies againſt a Perſon who owes another a *certain* Sum of Money on Bond or Contract for a Thing ſold, which the Debtor refuſes to pay at the Day agreed; then the Creditor ſhall have an Action of Debt againſt him for the ſame: And where the Money is due upon any Specialty (that is, any Deed or Inſtrument under the Hand and Seal of a Perſon) this Action and no other lies. *Law Dict.*

† *Indebitatus Aſſumpſit*, is a Term uſed in Declarations and Proceedings at Common Law, where one is indebted to another in any certain Sum; and it is likewiſe an Action thereon. *Ibid.*

chequer, *Anon.* but ſeems, ſays Mr. *Viner*, to be *Milton*'s Caſe. *S. C.* cited by *Rainsford*, *J.* as *Milton*'s Caſe, lately adjudged in the Exchequer, and ſays that though *Hale*, Ch. B. ſaid it were well if the Law were otherwiſe, yet we all agreed that a Bill of Exchange accepted, *&c.* was indeed a good ground for a ſpecial Action upon the Caſe, but that it did not make a Debt; firſt, becauſe the Acceptance is only conditional on both Sides. If the Money be not received, it returns back upon the Drawer, and he remains liable ſtill, and this is only collateral. 2dly, Becauſe *Onerabilis* does not imply Debt. 3dly, Becauſe the Caſe is *primæ Impreſſionis*, and there is no Precedent for it. 1 *Mod.* 286. *Trin.* 22 *Car.* 2. *B. R.* in Caſe of *Brown* v. *London.*

2. In caſe the Plaintiff declared upon the Cuſtom of Merchants, and that *T. S.* drew a Bill of Exchange upon the Defendant to pay to the Plaintiff, which he accepted, and has not paid, and likewiſe upon an *Indebitatus*, for that the Defendant had accepted it. It was inſiſted in Arreſt of Judgment, that an *Indebitatus Aſſumpſit* would not lie, but an Action on the Caſe only; and of that Opinion were *Hale* and *Rainsford*, who ſaid it was ſo adjudged in the Exchequer ſince the King's Reſtoration; and ſo Judgment was ſtayed, *hæſitante Twiſden*; for he conceived that the Cuſtom made it a Debt by him that accepted the Bill. *Vent.* 152. *Mich.* 25. *Car.* 2. *Brown* v. *London.*—*Freem. Rep.* 14. *Pl.* 13. *S. C.* accordingly.—2 *Lutw.* 1594. in Caſe of *Bellaſyſe* v. *Heſter*, it was ſaid by *Powell* J. that an *Indebitatus Aſſumpſit* does not lie upon a Bill of Exchange; and the Reporter obſerves, that at this Time it was not denied by the other Juſtices, and cites the Caſe of *Brown* v. *London*, wherein Judgment in like Caſe was arreſted after Verdict, as reported by *Lev.* 298. and ſays it has been adjudged after Verdict, that Action of Debt does not lie upon a Bill of Exchange, and cites *Hard.* 485.

3. But tho' a general *Indebitatus Aſſumpſit* will not lie againſt the Acceptor of a Bill of Exchange, yet if

A.

A. delivers Money to *B.* to pay over to *C.* and gives *C.* a Bill of Exchange drawn upon *B.* and *B.* accepts it, *C.* may have an *Indebitatus Aſſumpſit* againſt *B.* as having received Money to his Uſe, but muſt not declare only upon the Bill of Exchange accepted. 3 *New Abr. Law*, 614. 1 *Ven.* 153. 1 *Rol. Abr.* 32.

4. As to the Manner of declaring on a Bill of Exchange, this is ſaid to have varied; the Declaration in ſome Caſes being general; ſometimes ſpecial, and laid with an expreſs Promiſe, and at other Times without it: But it ſeems to be now ſettled, that the Cuſtom of Merchants concerning Bills of Exchange, being Part of the Common Law of which the Judges will take Notice *ex Officio*, it is unneceſſary to ſet forth the Cuſtom ſpecially in the Declaration, and that it is ſufficient to ſay, that ſuch a Perſon, according to the Uſage and Cuſtom of Merchants, drew the Bill. 3 *New Abr. Law*, 614. *Co. Litt.* 182. 2 *Inſt.* 404. *Yelv.* 136. 4 *Co.* 76. *Cro. Car.* 301. *Hard.* 486. 1 *Salk.* 125, 127. *Lutw.* 233. *Carth.* 83, 269. 5 *Mod.* 367. 1 *Show.* 127. 3 *Mod.* 226. *L. Raym.* 1542.

5. In Caſe upon a Bill of Exchange againſt the Acceptor, it was alledged generally *quod acceptavit*. And on Demurrer to the Declaration Exception was taken, that by 3 *Anne*, C. 9. the Acceptance muſt be in writing, and therefore this ought to be alledged to be ſo. *Sed per Curiam*, *Acceptavit* is enough, and, if Writing is neceſſary, it will be implied. Beſides, the Writing required by the Statute is only in order to make the Drawer liable to Damages and Coſts. The Plaintiff muſt have Judgment. *Stran.* 817. *Erſkine* v. *Murray*.

6. As by the Cuſtom of Merchants public Notaries uſually proteſt Bills, it hath been held that pleading *proteſtavit ſeu proteſtari cauſavit* is ſufficient; and that the Party may plead *proteſtavit*, and give in Evidence that the Notary Public did it. 3 *New Abr. Law*, 613. *Cumb.* 153.

7. If the Drawee be dead, or cannot be found to accept a Bill, theſe are good Cauſes of proteſting it; and alledging in pleading, that the Party on whom the Bill was drawn *non fuit inventus*, is ſufficient, without ſhewing that Inquiry was made after him. *Carth.* 510.

8. If a Bill of Exchange be drawn at Uſance, it muſt be averred what this Uſance is; otherwiſe the Court will not take Notice of it. 1 *Salk.* 131. *Buckley* v. *Cambell.* See P. 12.

9. Debt againſt a Merchant upon a Bill by him payable at the Feaſt of the Purification called *Candlemas-Day*; and after Judgment for the Plaintiff, it was moved in Arreſt thereof, becauſe Payment at *Candlemas* is not known in our Law: But Judgment was affirmed; for that amongſt Merchants ſuch Payment is known to be on the 2d of *February*; and the Judges ought to take Notice thereof for the Maintenance of Traffic. *Vin. Abr. Tit. Bills of Exchange, &c.* (A) 1 *Yelv.* 135. *Mich.* 6 *Jac. B. R. Pierſon* v. *Pounteys.* Note, it ſeems by this Caſe it is not neceſſary to aver in the Declaration, that *Candlemas-Day* was the 2d of *February*.

10. In an Action upon the Caſe upon a Bill of Exchange, the Plaintiff in his Declaration declared upon a Bill of Exchange, and that he offered it to the Perſon on whom it was drawn, and he refuſed to pay it, *per quod* the firſt Drawer *devenit onerabilis per conſuetudinem, &c.* and there was an *Indebitatus Aſſumpſit*, and a *Quantum Meruit*, in the Declaration. Judgment by Default, and a Writ of Inquiry of Damages, and intire Damages given. And now it was moved in Arreſt of Judgment, that as the Matter ſtood upon the firſt Count, this Action was founded upon a Deceit, the Bill not being paid according to the Warranty, every one who draws a Bill warranting the Payment thereof; and therefore being in the Nature of an Action for a Deceit, which is a *Tort*, it cannot be joined with an *Aſſumpſit*, which is founded upon a Contract; and therefore, for want of laying

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an expreſs Promiſe, it was ill, intire Damages being given. *Northey* ſaid, that the Action was founded upon the Cuſtom, and that the Obligation aroſe by that, and therefore the Action is maintainable without ſhewing a Promiſe. *Cro. Car.* 302. A Declaration upon a Bill of Exchange without ſhewing any Promiſe; and the Bill is ſo. 2. This ſounds all in Contract; for the Cuſtom raiſes a Promiſe in Law, that the Drawer will pay the Money, if the Perſon upon whom it was drawn refuſes to pay it. And 2 *Cro.* 307. ſays, that if a Merchant accepts a Bill, it has by the Cuſtom the Force of a Promiſe to compel him to pay the Money. *Holt* Chief Juſtice at the Beginning ſeemed to agree with the Objection, and ſaid, that he who draws the Bill warrants the Payment of it, and, if he does not, it is a Deceit, and one may have an Action upon it; but then they ought not to join it with an Action upon a Promiſe. That is the Caſe of Sir *John Dalſton, and Janſon, Mich.* 7. *W.* 3. *B. R.* (*Raym.* 58.) In the Time of 2 *Cro.* they were not arrived at this Way of declaring upon Bills of Exchange. *Gould* Juſtice cited 1 *Sid.* 306. that if a Man brings *Aſſumpſit* for the Arrears of an Account, where the Action formed is Debt, he ought to lay an expreſs Promiſe to maintain the Action. *Holt* ſaid, that the Notion of Promiſes in Law was a metaphyſical Notion; for the Law makes no Promiſe but where there is a Promiſe in the Party. Afterwards in this Term Judgment was given for the Plaintiff, becauſe the Drawing of the Bill was an actual Promiſe. *L. Raym.* 538. *Strake* v. *Cheeſeman. S. C.* 1 *Salk.* 128. *Carth.* 509.

11. *Aſſumpſit* for 40 *l.* The Plaintiff declares upon a Bill of Exchange for 20*l.* payable 10 Days after Sight, and that the Bill was ſeen by the Defendant, and accepted the 5th of *May*; and then he ſhews another *Aſſumpſit* for the other 20*l. &c.* The Defendant craves *Oyer* of the Original, and upon that prays that the Writ may abate *quoad primam Promiſſionem*, becauſe the Original bears *Teſte* the 15th of *May*, and

the Bill was not payable until 10 Days after Sight; *et quoad alteram Promiſſionem*, he pleads in Bar without Defence. The Plaintiff demurs. It was argued by the Defendant's Counſel, that if the Bill be payable 10 Days after Sight, the Day of Sight ſhall be taken excluſive, as well by reaſon of the Word *poſt*, as becauſe it is always ſo underſtood among Merchants. But the Court was of Opinion, 1ſt, That in real Actions the Writ may abate in Part, but in perſonal Actions a Writ cannot abate in Part. Therefore, admitting that the Day is excluded here, the Writ muſt abate for the Whole, or not at all. 2dly, That there is no Fraction of a Day in this Caſe; for the Law will never account by Minutes or Hours to make Priorities in a ſingle Day, unleſs it be to prevent a great Misfortune or Inconvenience; as if a Bond be made the firſt Day of *January*, and this Bond is releaſed the ſame Day, the Bond may be averred to be made before the Releaſe. So if a *Feme ſole* bind herſelf in a Bond, and the ſame Days marries, one may aver that ſhe married after the Bond delivered. In *Aſſize* it appears, that the Deſſeiſin was done the ſame Day on which the Writ was *teſted*; yet this ſhall not abate the Writ, becauſe the Aſſize might be purchaſed after the Diſſeiſin. 3. That if there is a Cuſtom among Merchants, that the Day of the Sight ſhall be excluded, it ought to have been pleaded ſpecially: for it is a ſpecial Cuſtom of which the Court cannot take notice without pleading. And *Powell* Juſtice ſaid, that the Court would take notice of the *Lex Mercatoria*, as that there is no Survivorſhip, or of a general Cuſtom, as Gavel-kind; but that ſuch ſpecial Cuſtom as this here ought to be pleaded. As in Action upon a Bill of Exchange, unleſs the Plaintiff declares upon a Cuſtom to ſupport the Action according to the common Form, the Action will not be maintainable. 4 *Powell* and *Nevill*, Juſtices, were of Opinion, that the Day on which the Bill was ſhewn ſhall be reckoned one of the ten: For, according to *Clayton*'s Caſe (5 *Co.* 1. 2 *Vent.* 308, 310.) and all the Books, when the Computation

putation is to be made from an Act done, the Day on which the Act was done must be included; because since there is no Fraction in a Day, that Act relates to the first Moment of the Day in which it was done, and was, as it were, then done. But when the Computation is to be from the Day itself, and not from an Act done, there the Day on which the Act was done must be excluded by the express Words of the Parties. As if a Lease be made to commence *a die datus*, the Day is excluded; but if it be *a confectione*, which is an Act done, the Day of the making shall be included. But *Treby* Chief Justice *contra* held, that if a Bill be payable 10 Days after Sight, the Day of Sight cannot be accounted one of the 10 Days, but shall be excluded. 1st, Because it may be seen the last Minute of the Day, and that may be intended as reasonably, as that it was seen the first Minute. 2dly, The Party may have the * whole Day to view the Bill, and that is allowed him by the Law. 3dly, Because the contrary Construction seems absurd; for then if a Bill be payable one Day after Sight, it must be paid the same Day that it is seen, which is not the Day after the Sight, as the Bill requires †. As to *Clayton*'s

* According to the Custom of Merchants, the Party on whom the Bill is drawn, may have 24 Hours to consider whether he will accept it, or not. *Marius* 62.

† You are to take special Notice, says *Marius*, that the Day on which the Bill of Exchange doth fall due, is always to be accounted as Part of the Time limited in the Bill of Exchange as included therein; so that the Day on which any Bill of Exchange doth fall due doth belong to the Party which is to make Payment thereof, as being Part of his Time. As for Example, suppose a Bill is made payable at thirty Days Sight, and it be accepted the 5th Day of *February* (*February* having but 28 Days) you must reckon from the 5th of *February* to the 6th for one Day, and from thence to the 7th, two Days, and so forward (allowing 24 Hours to a Day) it will fall due, or the 30 Days will expire with the 7th of *March* inclusive: And in like Manner with Bills payable at Usance, double or treble Usance, or Bills payable at a prefixt Day: the full Time of the Usances or prefixt Days must be taken inclusive as Part of the Time appointed for Payment of the Bill: And three Days after the Expiration of that Day are usually allowed

Clayton's Caſe, he admitted that it was good Law, but not contrary to his Opinion: for if a Man make a Leaſe the firſt of *January*, to have and to hold *a confectione* for a Year; there the Day of the making muſt be accounted one, becauſe being a Leaſe from the Delivery, and to continue but for one Year; unleſs the Day be included, the Leaſe will not determine until the End of the 1ſt of *January* the next Year, and ſo there will be two firſt Days of *January* in one Year. But notwithſtanding his Opinion, becauſe his Brothers were of a contrary Opinion, he ordered that the Defendant ſhould anſwer over.

Note, Before this Opinion of the Court was pronounced, the Defendant's Counſel offered to take Exceptions to the Declaration; but the Court refuſed to admit them; for *per Curiam* upon a Plea to the Writ, the Defendant cannot take Exceptions to the Count before the Writ be adjudged good; for then the Defendant has Time enough to take Advantage of the Declaration, and before it is needleſs, becauſe if the Writ be abated, that will determine the whole. After this it was objected, That the Defendant had not made Defence, and the Queſtion was if this was Matter of Form, and ſo aided by the general Demurrer. And *prima facie* the Court was of Opinion this was Matter of Subſtance; becauſe the Defendant is no Party to the Action without Defence: But after having conſulted the Judges of the King's Bench, where it has been a long Time held Matter of Form, they agreed that it was aided by the general Demurrer; though at the ſame Time they ſeemed to comply with that Opinion, rather than to approve it with their own Judgments, to the end that there might be a Conformity between the two Courts. *L. Raym.* 280. In *C. B.* 9 *W.* 3. *Bellaſis* and *Heſter*. *S. C. Lutw.* 1589.

lowed in *London*, as well for him to whom payable, to procure Payment thereof, as for him, on whom the Bill is drawn, to pay it. *Marius*, 94.

12. The

12. The Plaintiff brought an Action upon the Caſe upon a Bill of Exchange againſt the Defendant, and declared upon the Cuſtom of Merchants, which he ſhewed to be thus: That if any Merchant ſubſcribes a Bill, by which he promiſes to pay a Sum of Money to another Man or his Order, and afterwards the Perſon to whom the Bill was made payable, indorſes the ſaid Bill for the Payment of the whole Sum therein contained, or any Part thereof, to another Man, the firſt Drawer is obliged to pay the Sum ſo indorſed to the Perſon to whom it is indorſed payable; and then the Plaintiff ſhews, that the Defendant *Cardy*, being a Merchant, ſubſcribed a Bill of 46*l.* 19*s.* payable to *Blackman* or his Order: That *Blackman* indorſed 43*l.* 4*s.* of it payable to the Plaintiff, *&c.* The Defendant pleaded an inſufficient Plea. The Plaintiff demurred, and the Defendant joined in Demurrer. And adjudged *per totam Curiam* that the Declaration is ill: For a Man cannot apportion ſuch perſonal Contract; becauſe he cannot make a Man liable to two Actions, where by the Contract he is liable but to one. As if *A.* grant a Rent-Charge of 20*l.* *per annum* to *B.* *B.* grants 10*l.* to *C.* *C.* cannot compel the Ter-tenant to attorn. So if Lands are conveyed with Warranty to *A.* and *B.* their Heirs and Aſſigns, if Partition be made, the Warranty is extinct. See *Hob.* 25. But if in the principal Caſe the Plaintiff had acknowledged the Receipt of the 3*l.* 15*s.* the Declaration had been good. And though it was objected by Mr. *Northey* for the Plaintiff, that the Plaintiff has made Payment of a Part to be a Part of the Cuſtom, and therefore it was well enough by the Cuſtom. *Holt* Chief Juſtice anſwered, that this is not a particular local Cuſtom, but the common Cuſtom of Merchants, of which the Law takes notice; and therefore the Court cannot take the Cuſtom to be ſo. And the whole Court were of Opinion, that Judgment ought to be entered for the Defendant. But, upon the Importunity of Mr. *Northey*, Leave was given to the Plaintiff to diſconti-

nue

nue upon Payment of Coſts. *L. Raym.* 306. *Hawkins* v. *Cardy.*

13. In *Aſſumpſit* the Plaintiff declared that the Cuſtom of Merchants is, *if one, for Wares delivered to him or his Factor, makes a Bill of Exchange directed to a Merchant, and he to whom it is directed accepts of it, and after refuſes to pay, and this is proteſted* before a Public Notary, *then he, who delivered the Bill, is bound to pay it*; and alledges that he delivered ſuch Wines in *France* to *J. S.* the Factor of *B.* and he thereupon delivered a Bill of Exchange for the Money to *J. N.* who accepted it, and had not paid it, and found upon *Non Aſſumpſit* for the Plaintiff. It was aſſigned for Error that this Action is grounded upon the Cuſtom of Merchants, and it is not ſhewed that the Plaintiff was a Merchant at the Time of the Bill of Exchange delivered; but becauſe he is named Merchant in the Declaration, and the Bill is for Merchandize ſold, it ſhall be intended he was a Merchant at the Time, and ſo Judgment affirmed. *Vin. Abr. Tit.* Bills of Exchange (O) 2 *Cro. J.* 301, 302. *Pl.* 5, *Paſch.* 9 *Car. B. R. Barnaby* v. *Rigault.* See Page 8. Parag. 4.

14. In Caſe on the Cuſtom of Merchants, on accepting a Bill of Exchange from *Paris*; the Defendant demurred after Iſſue offered on Payment, and excepted that *no Time appears when the Bill was payable, being only on double Uſance, and no particular Cuſtom alledged that double Uſance ſignifies two Months*; *ſed non allocatur*; it being a known Term among Merchants that Uſance is a Month, double two Months, and being averred *he had not paid in two Months*, it is well enough, and Judgment for the Plaintiff, the Defendant having waved the Advantage hereof by pleading Payment; but by *Twiſden J.* had it been on Demurrer to the Declaration, the Plaintiff ſhould aver a particular Cuſtom that Uſance ſignifies a Month, *&c. Vin. Abr. Tit.* Bills of Exchange (O) 4. 3 *Keb.* 645. *Pl.* 60. *Hill.* 27 and 28 *Car* 2. *Smart* v. *Dean.*

15. De-

15. Demurrer to a Declaration on a Bill of Exchange, becauſe it ſays only that the Party to whom it was directed *did not accept it*, but ſays not that *it was ſhewn or tendered to him*, and the Demurrer allowed; for elſe it would be in the Plaintiff's Power to charge the Drawer, when perhaps the Drawee was ready to pay the Money according to the Tenor of the Bill, had it been tendered to him. *Vin. Abr. Tit.* Bills of Exchange (O) 5. 2 *Show.* 180. *Pl.* 179. *Hill.* 33 and 34 *Car.* 2. *B. R. Mercer* v. *Southwell.*

16. In an Action on the Caſe on a Bill of Exchange, alledging the Cuſtom, and that the Bill was drawn ſuch a Day, *&c.* but Exception was taken, *that the Date of the Bill was not ſet forth*, yet held, *per tot. Cur.* that it was well enough, and they would intend it dated at the Time of drawing it. *Vin. Abr. Tit.* Bills of Exchange (O) 7. 2 *Show.* 422. *Pl.* 389. *Hill.* 36 and 37 *Car.* 2. *B. R. De la Courtier* v. *Bellamy.*

17. In Debt upon a Bill of Exchange by an Indorſee, the Plaintiff had Judgment. It was aſſigned for Error, that the Plaintiff had not averred in his Declaration *that the Value was received by the Drawers of the Bill: Sed non allocatur*; for it lies not in his Mouth to ſay ſo, and it is not material to him whether it was paid to them or not, and therefore Judgment was affirmed. *Vin. Abr. Tit.* Bills of Exchange (O) 8. *Lutw.* 885. b. 889. a. 1 *Jac.* 2. *in Cam. Scacc. Death* v. *Serwonters.*

18. Action *ſur le Caſe* on a Bill of Exchange brought againſt the Acceptor by the Plaintiff as Adminiſtrator to the Party to whom the Bill was payable, on the Cuſtom of Merchants; and Breach was aſſigned, *præd' tamen the Defendant ad vel poſt præd. diem*, viz. *the Day of Payment, non ſolvit nec aliqualiter pro eiſdem huc uſque contentavit.* Demurrer to the Declaration, becauſe he did not ſay *non ſolvit, at* or *before* the Day, and a Payment before the Day is a Payment at the Day; but held good *per Cur.* becauſe ſaid *huc uſque non, &c.* Judgment for the Plaintiff. *Vin. Abr. Tit.* Bills of Exchange

Exchange (O) 9. 2 *Show.* 437. *Pl.* 400. *Mich.* 1 *Jac.* 2. *B. R. Hilman* v. *Law.*

19. In Covenant to pay ſo much Money to the Plaintiff or his Aſſigns as ſhould be drawn on the Defendant by a Bill of Exchange, and the Breach was aſſigned in Non-payment. The Defendant pleaded that the Plaintiff, *ſecundum legem mercatoriam*, did aſſign the Money to be paid to *A.* who aſſigned it to *B.* to whom the Defendant paid 100*l.* and tendered the reſt. Upon Demurrer it was objected, that the Plea was ill, becauſe the Defendant did not ſet forth the Cuſtom of Merchants *in particular*, without which the Aſſignments are void, of which Cuſtom the Court cannot take judicial Notice, but it muſt be pleaded; and the Court were of Opinion that the Plea was not good. *Vin. Abr. Tit.* Bills of Exchange (O) 11. 3 *Mod.* 226. *Trin.* 4 *Jac.* 2. *B. R. Carter* v. *Dowrith. Carth.* 83. *Mich.* 1 *W.* and *M.* the *S. C.* (In *Cam. Scacc.*) the Court ſeemed of Opinion that they ought to take notice of the Law of Merchants, becauſe it is Part of the Law of the Land, and eſpecially of this Cuſtom concerning Bills of Exchange, becauſe it is the moſt general amongſt all their Cuſtoms, and the Judgment was reverſed.—*Show.* 127. *S. C.* in Error in the Exchequer Chamber, the Court held the Plea good, and the Judgment was reverſed.

20. In Caſe, *&c.* upon a Bill of Exchange, wherein the Plaintiff ſet forth the Cuſtom of *London* among Merchants and others dwelling there, that if any Merchant ſhould draw a Bill of Exchange directed to another requiring him to pay a Sum of Money, and if that Perſon did accept the Bill, then he became liable to pay the Money *ſecundum acceptationem præd'*; that one *King* drew a Bill at *Sandwich* upon the Defendant to pay 8*l.* to the Plaintiff, and that the Defendant accepted the Bill, but had not paid the Money. Exception was taken that the Acceptor is to pay *ſecundum acceptationem ſuam*, and no Time is mentioned in the Bill itſelf when the Money was to be paid, nor has the Plaintiff ſet forth that the Defendant

accepted

accepted it to pay it at Sight, or at any certain Time; and ſo it might be that the Time of Payment was not paſt before the Action brought, and this was held a good Exception; but by Conſent the Plaintiff was to amend his Count. *Vin. Abr. Tit.* Bills of Exchange (O) 12. *Lutw.* 231, 233. *Mich.* 4 *Jac.* 2. *Ewers* v. *Benchkin.*

21. *C.* drew a Bill of Exchange upon *R.* and Company in *Oporto* for 1000 *Millerees*, upon the 6th of *Auguſt*, payable 30 Days after Sight, and upon the 14th of *Auguſt* the King of *Portugal* leſſened the Value of the *Millerees* 20 *per cent.* ſo that it was impoſſible to have Notice. The Bill was preſented for Acceptance, with the Advance of 20 *per cent.* *R.* was ready to accept and pay at the current Value, but not with the Advance, and therefore there was a Proteſt for Non-Acceptance, and an Action was brought againſt the Drawer. It was ruled by *Holt* Chief Juſtice, that here, there not being Notice, the Bill ought to be paid according to the antient Value; for the King of *Portugal* may not alter the Property of a Subject of *England*; and therefore this Caſe differs from the Caſe of mixed Monies in *Davis*'s Reports; for there the Alteration was by the King of *England*, who has ſuch a Prerogative, and this ſhall bind his own Subjects. *Vin. Abr. Tit.* Bills of Exchange (O) 13. *Skin.* 272. *Pl. Trin.* 1 *W.* and *M.* in *B. R.* *Du Coſta* v. *Cole.*

22. The Law of Merchants is, that if he who has ſuch a Bill does lapſe his Time, and does not proteſt or make his Requeſt, if any Accident happens by this Neglect in Prejudice to the Drawer, he hath loſt his Remedy againſt him; but if ſuch a thing had happened, it ought to have come of the other Side: and not being ſo, we muſt adjudge on the Declaration. It is not neceſſary to ſhew the Cuſtom of Merchants, but neceſſary to ſhew *how the Uſance ſhall be intended*, becauſe it varies as Places do. 12 *Mod.* 16. *Hill.* 3 *W.* and *M. Megadow* v. *Holt.*

23. The Plaintiff declared on a ſpecial Cuſtom in *London*, for the *Bearer* to have this Action; to which

the Defendant demurred, without traverſing the Cuſtom; ſo that he confeſſed it, whereas in Truth there was no ſuch Cuſtom: And the Court was of Opinion, that for this Reaſon Judgment ſhould be given for the Plaintiff; for tho' the Court is to take Notice of the Law of Merchants as Part of the Law of *England*, yet they cannot take notice of the Cuſtom of particular Places; and the Cuſtom in the Declaration being ſufficient to maintain the Action, and that being confeſſed, he has admitted Judgment againſt himſelf. 1 *Salk.* 125. *Pl.* 2. 3 *W.* and *M.* in *B. R. Hodges* v. *Steward.*

24. In Caſe on a Bill of Exchange, the Plaintiff ſet forth the Cuſtom of Merchants, but brought not his Caſe within it; yet if by the Law of Merchants he has a Right to his Action, the ſetting forth the Cuſtom ſhall be rejected as Surpluſage. *Show.* 31, *Mich.* 3 *W.* and *M. Megadara* v. *Holt.* 12 *Mod.* 15, 16. *Hill.* 3 *W.* 3. *Megadow* v. *Holt*, *S. C.* adjudged for the Plaintiff, and held that it is not neceſſary to ſhew the Cuſtom of Merchants; but it is neceſſary to ſhew how the Uſance ſhall be intended, becauſe it varies as Places do.—It is ſufficient to ſay that ſuch a Perſon, *ſecundum uſum & conſuetudinem mercatorum*, drew a Bill, and the ſetting forth the Cuſtom is Surpluſage; for this Cuſtom of Merchants concerning Bills of Exchange is Part of the Common Law, of which the Judges will take notice *ex officio*. *Carth.* 270. *Paſch.* 5 *W.* and *M.* in *B. R. Williams* v. *Williams.*

25. Action *ſur le Caſe* by an Indorſee againſt the firſt Drawer of a Bill of Exchange. The Defendant pleaded that the Indorſer, at the Time of the Indorſement, was a Bankrupt. Demurrer. *Per cur.* this is a good Plea in Bar: for a Bankrupt is diſabled to aſſign a Bill; but then he ought to have pleaded a *Commiſſion taken out*; wherefore Judgment for the Plaintiff. *Vin. Abr. Tit.* Bills of Exchange (O) 18. 12 *Mod.* 50. *Hill.* 5 *W.* and *M. Batterſon* v. *Goodwin.*

26. In

26. In Caſe on a Bill of Exchange, the Plaintiff ſet forth the Cuſtom of Merchants, *&c.* and that one *J. P.* drew a Bill upon the Defendant payable to the Plaintiff; that the Bill was preſented to the Defendant, who accepted it *upon Condition to pay it by a Bank bill*, to which the Plaintiff agreed; and that the Defendant, in Conſideration thereof, promiſed to pay the Money in a Bank-bill, *which ſhould be of good and old Date*, and aſſigns the Breach in giving him a Bank-bill payable to one *Philips* or Bearer, dated 1ſt *July* 1696, in which the Defendant had no Manner of Property or Intereſt, ſo that the Plaintiff could not, nor can as yet, receive the Money. After Verdict it was moved in Arreſt of Judgment, that the Breach was not well aſſigned; for it ought to be aſſigned in the ſame Manner as the Promiſe was made, *viz.* that he did not pay the Money in a Bank-bill of good and old Date; and alſo for want of averring that the Bill made by *P. &c.* was made according to the Cuſtom of Merchants, purſuant to the Cuſtom alledged in the Declaration to this Purpoſe. *Sed non allocatur*; for it ſhall be ſo intended. *Vin. Abr. Tit.* Bills of Exchange (O) 21. *Lutw.* 227. *Hill.* 8 *W.* 3. *Mannin* v. *Cary.*

27. A Bill accepted for Money won at Play. The Acceptor may well plead the Statute in Bar; for tho' the Acceptance makes a new Contract, yet it ſtands on the ſame Conſideration; and if this Plea ſhould not be good, the Statute would be eluded. Indeed if the Plaintiff had indorſed the Bill over *bona fide* to another, who was ignorant of the Iniquity, the Statute could not have been pleaded againſt ſuch an Indorſee; but it may againſt him who is Party to the Wrong. Judgment for the Defendant. 12 *Mod.* 96, 97. *Trin.* 8. *W.* 3. *Huſſey* v. *Jacob.*

28. An Action on the Caſe was brought on a Bill of Exchange; to which the Defendant pleaded, *that after the Acceptance of the Bill, he gave a Bond in Diſcharge thereof*; and upon Demurrer to his Plea, it was objected that it amounted to the general Iſſue; for the Debt upon the Bill being extinguiſhed by the

Bond, the Defendant ought to have pleaded *non Assumpsit*, and to have given the Bond in Evidence; and the Court seemed of that Opinion, but by Consent the Defendant did plead the general Issue. *Vin. Abr. Tit.* Bills of Exchange (O) 23. 5 *Mod.* 314. *Mich.* 8 *W.* 3. *Hackshaw* v. *Clarke.*

29. In Case on a Bill of Exchange drawn upon two Partners in Trade, and which was accepted by one only. Exception was taken to the Declaration, because it was *per consuetudinem Angliæ*, &c. and therefore ill; because the Custom of *England* is the Law of *England*, of which the Judges ought to take Notice without pleading; *sed non allocatur*; for though heretofore this has been allowed, yet of late Time it has always been over-ruled; and in an Action against a Carrier, it is always laid *per consuetudinem Angliæ*, &c.

Another Exception was that though *Lex Mercatoria* is part of the Law of *England*, yet it is but a particular Custom among Merchants; and therefore *it ought to be shewn in* London, *or some other particular Place*; *sed non allocatur*; for the Custom is not restrained to any particular Place. And in *Hard.* 485. it is laid as here.

Another Exception was, that it is not said that the said *J. S. promised for the Defendant and himself upon the Account of Trade*, and it may be that this was for Rent or some other Thing for which the Partner is not liable. *Sed non allocatur*; for the Plaintiff having declared so specially upon the Custom, it shall be *intended this was for merchandizing, especially since the Defendant has demurred generally.* And if the Case had been otherwise, the Defendant might have pleaded it.

Another Exception was, that the Declaration is, that *Hutchins indorsavit billam prædictam solubilem to the Plaintiff*, which is Nonsense; for it ought to be, that he indorsed the Bill, that the Defendant should pay, *&c. sed non allocatur*; and Judgment given for the Plaintiff. *L. Raym.* 165. *Hill.* 8 and 9 *W.* 3. *Pinkney* v. *Hall.*

30. *Assumpsit*

30. *Assumpsit* upon a Bill of Exchange. The Plaintiff declares, that *secundum consuetudinem et usum mercatorum*, the Acceptor is bound to pay, *&c.* without shewing the Custom at large, and the Defendant demurred; and it was adjudged for the Plaintiff; *per Cur.* it is a better Way than to shew the Whole at large. *L. Raym.* 175. *Hill.* 8 and 9 *W.* 3. *Soper* v. *Dible.*

31. In an Action on a Bill of Exchange, unless the Plaintiff declares upon a Custom to support the *Assumpsit* according to the common Form, the Action will not be maintainable; *per Powell.* J. *L. Raym.* 281. *Mich.* 9 *W.* 3.

32. Action for Part of the Sum in a Bill of Exchange lies not without shewing the other Part to be satisfied. 1 *Salk.* 65. pl. 2. *Mich.* 10 *W.* 3. *B. R. Hawkins* v. *Cardee.* *Carth.* 466. *S. C.* this was an Indorsement ordering Part of the Bill to be paid to Plaintiff.—12 *Mod.* 217. *Hawkins* v. *Cardy.* *S. C.* —*L. Raym.* 360. *S. C.* adjudged *per tot. Cur.* that the Declaration is ill; for a Man cannot apportion a personal Contract, so as to make the Defendant liable to two Actions, where by the Contract he is liable only to one.

33. *Assumpsit* upon a Bill of Exchange. The Plaintiff declares, that *J. S.* drew a Bill of Exchange upon the Defendant, dated the 25th of *March*, 1696, payable within one Month after; that afterwards, *viz.* such a Day in *April* 1697, he shewed the Bill to the Defendant, and he promised to pay it *secundum tenorem et effectum billae prædictæ*; all which appears upon the Plaintiff's Declaration. To which Mr. *Northey* for the Plaintiff answered, that it will amount to a Promise to pay generally. Of which Opinion was the whole Court. And *Holt*, Chief Justice, took the Distinction where the Day of Payment is past at the Time of Acceptance, as it was in this Case, and where the Day of Payment is to come. In the former Case, Acceptance to pay *secundum tenorem et effectum billæ* will amount to a general Acceptance to pay the Money; *contra*, in the latter Case. For in the former

mer Caſe it is impoſſible to pay the Money as the Bill appoints. But he ſaid, that it had been better in this Caſe to have declared of a general Promiſe, without having reſtrained it by the *tenorem et effectum billæ*. And (by him) in ſuch Caſe the Acceptance of a Bill amounts to an expreſs Promiſe to pay it. But (by him) if the Plaintiff declares, that the Acceptance was before the Day appointed for the Payment, and that he accepted to pay it *ſecundum tenorem et effectum billæ prædictæ*; and it appears upon Evidence, that the Acceptance in Fact was after the Day of Payment, that would be againſt the Plaintiff. Judgment for the Plaintiff. 1 *Salk.* 127. *Jackſon* v. *Pigott.* 10 *W.* 3. *L. Raym.* 346. *S. C.* adjudged for the Plaintiff. *Carth.* 459. *S. C.* And as for the Words *ſecundum tenorem et effectum billæ*, the Effect of the Bill is the Payment of the Money, and not the Day of Payment, and at the moſt it is only ſurpluſage in the Declaration; and Judgment for the Plaintiff.

34. There were three Bills of Exchange drawn for the ſame Sum (the other Bills not being paid.) Plaintiff proteſted the ſecond Bill, and brought his Action and declared on Non-Payment of the ſaid ſecond Bill, and had Judgment by Default; and upon a Writ of Inquiry, intire Damages; and now it was moved in Arreſt of Judgment, becauſe it was not averred in the Declaration *that the firſt and third was not paid*, and that it ought to be averred, becauſe the Bills were conditional, *viz.* to pay the ſecond if the firſt and third was not paid. But it was anſwered that the Allegation, that the Money *in billa predicta mentionat'* was not paid, did ſupply the want of that Averment, becauſe the Sum was the ſame in all the Bills; and Judgment was for the Plaintiff. *Carth.* 510. *Hill.* 11 *W.* 3. *B. R. Starke* v. *Cheeſman.*

35. In Caſe upon a Bill of Exchange the Plaintiff had Judgment by Default; it was moved in Arreſt of Judgment, that to intitle the Plaintiff to a Proteſt, the Declaration only ſaid that the Perſon upon whom the Bill was drawn *non fuit inventus* in ſo long a Time, without

ſhewing that they had made Enquiry after him; but it was anſwered that it was according to the Cuſtom among Merchants, and according to the common Form in ſuch Caſes; and the Plaintiff had Judgment. *Carth.* 509, 510. *Hill.* 11 *W.* 3. *B. Starke* v. *Cheeſman.* 1 *Salk.* 128. *Pl.* 10. *S. C.* but *S. P.* does not appear.——*L. Raym.* 538. *S. C.* but *S. P.* does not appear.

36. An *Indebitatus Aſſumpſit* upon a Bill of Exchange by *Domingo Franca*: it appeared upon the Declaration that there were ſeveral Indorſements, and the Action was brought by the firſt Indorſer, who ſtruck off the ſeveral Indorſements, and brought an Action for Non-Payment; the Bill did ſpecify *Value received* of the Plaintiff. *Holt* ſaid, if the Action had been *upon the Cuſtom*, in this Caſe the way had been for the Plaintiff to get the laſt Indorſee to indorſe it to him, for him to bring an Action as Indorſee; but this Action, he ſaid, well lay, for the Bill was given as a Security for Money, and without Doubt it was a Debt. Then it was argued that the Declaration ſhews a Proteſt for Want of Payment, when it was in Truth for want of Acceptance, as appeared by the Proteſt, yet it was ruled well; becauſe this was not the Cuſtom, but a plain Debt, and one might bring *Debt or Indebitatus Aſſumpſit* upon a Bill of Exchange, becauſe it is in the Nature of a Security. 12 *Mod.* 345. *Mich.* 11 *W.* 3. *Anon.*

37. In an Action againſt the Drawer, the Plaintiff declared on the Cuſtom of Merchants, and ſet forth that the Drawee refuſed to pay, *per quod onerabilis devenit*, &c. but laid no expreſs Promiſe; after Judgment by Default and a Writ of Enquiry, it was moved in Arreſt, that the Declaration had ſet forth the Cuſtom, but not *an expreſs Promiſe to pay.* But it was anſwered that it was ſufficient to count upon the Cuſtom; becauſe the Cuſtom makes both the Obligation and Promiſe; and *Holt*, Ch. J. held that the drawing the Bill is an expreſs Promiſe: and Judgment for the Plaintiff; 1 *Salk.* 128. pl. 10. *Mich.* 11 *W.* 3. *B. R.*

Starkey v. *Cheeſman*. *Carth.* 502, 510. *S. C.* And objected that it was not laid that the Defendant promiſed to pay the Money to them after the Proteſt made, or that he had any Notice of the Proteſt; but adjudged for the Plaintiff. *L. Raym.* 538. *S. C.* adjudged for the Plaintiff; becauſe the drawing the Bill was an actual Promiſe.

38. Though an Acceptance was within the three Days of Grace, *viz*, the laſt Day, within which Time Payment is good, and no Proteſt for Want of Payment can be made, unleſs the ſaid Days are elapſed, yet it is a Breach not to have paid the Money within the Uſance, and the Plaintiff has no Need to ſay in his Declaration upon a Bill of Exchange, that he did not pay the Money within the Days of Grace; but if the Fact was, that it was then paid, it ought to be ſhewn on the other Side; *per* Sir *Barth. Shower*, arg. and *Holt*, Ch. J. and *Northey*, agreed the ſame to be ſo. *L. Raym.* 574, 575. *Trin.* 12 *W.* 3. *Mutford* v. *Walcot.*

39. If a Bill is accepted, it is not neceſſary to alledge any Promiſe of Payment; for the Acceptance is an actual Aſſumption, and the Declaration need not alledge more; and though where the Bill was drawn payable at *Amſterdam*, ſome Houſe where the Money ought to be paid at *Amſterdam* ſhould be named, or otherwiſe the Party may proteſt the Bill, yet if it is accepted, the Acceptor becomes liable thereby. *Comyns*'s *Rep.* 75. pl. 49. *Trin.* 12 *W.* 3. *Gregory* v. *Walcup.*

40. A Bill of Exchange was directed to *A.* or in his Abſence to *B.* and began thus: *Gentlemen pray pay.* The Bill was tendered to *A. who promiſed to pay it as ſoon as he ſhould ſell ſuch Goods*; and in an Action againſt him for Non-Payment, the Declaration was of a Bill directed to him, without taking any Notice of *B.* and *Holt* held it well. 12 *Mod.* 447. *Paſch.* 13. *W.* 3. *Anon.*

41. A Bill of Exchange was thus: *Pray pay this my firſt Bill of Exchange, my ſecond and third not being paid.*

paid. In the Declaration the Indorſement was ſet forth thus, *viz.* that the Drawer [It ſhould be Payee, or the Perſon to whom payable] *indorſavit ſuper billam illam Content' bille illius ſolvend'* to the Plaintiff, without ſetting forth that the Bill was ſubſcribed. It was moved in Arreſt of Judgment, that there was no Averment, *that the ſecond and third Bill was not paid*, which is a Condition precedent; but *per Cur.* that muſt be intended, for the Plaintiff could not otherwiſe have had a Verdict; and therefore this Indorſement likewiſe is aided by their finding *quod Aſſumpſit.* 1 *Salk.* 130. pl. *Mich.* 1 *Ann. B. R. Eaſt* v. *Eſſington.* 7 *Mod.* 16, 87. *S. C.* The Court ſaid, that however it might have been on Demurrer, it will be well after Verdict; for if the ſecond or third were paid, there had been no Promiſe at all; for the Promiſe is conditional to pay this, if the ſecond or third be not paid, and therefore if the ſecond or third were paid, they could not find for the Plaintiff. *L. Raym.* 810. *S. C.* Adjudged for the Plaintiff.

42. Since the Statute 9 and 10 *W.* 3. Cap. 17. a Proteſt was never ſet forth in the Declaration; *per Holt.* Ch. J. and *Powell*, J. 3 *Salk.* 68. pl. 6. in Caſe of *Borough* v. *Perkins.*

43. An *Aſſumpſit* was brought by one *B.* againſt *C.* on a foreign Bill of Exchange, to pay according to the Cuſtom of Merchants, ſo much Money at two *Uſances*, viz. at *Amſterdam*, but it did not appear what the Time of thoſe Uſances was. *Holt*, Ch. J. ſaid, he would take Notice of the Cuſtom of Merchants, but not of that at *Amſterdam* or *Venice*, &c. In ſuch Caſe, you muſt ſet forth the Cuſtom in your Declaration. 11 *Mod.* 92. pl. 18. *Trin.* 5 *Ann. B. R. Buckley* v. *Camden.* See Note, Page 12.

44. A Bill of Exchange was drawn payable to *A.* but has no Day mentioned when it ſhould be paid. *A.* on Sight of the Bill promiſed to pay it on the 18th of *April.* It was objected, that the Action muſt be founded on the new Agreement, and not on the Cuſtom of Merchants; but *per Powell*, J. the Cuſtom of Merchants is by the Acceptance; and a Promiſe to

pay at ſuch a Time is good; and if it ſhould not bind on the Cuſtom of Merchants, it would not bind at all; becauſe no *Indebitatus Aſſumpſit* lies on the Acceptance; and Judgment for the Plaintiff, *Niſi*, by three Judges, *abſente Holt.* 11 *Mod.* 190. pl. 5. *Mich.* 7 *Ann. B. R. Walker* v. *Atwood.*

45. A Bill of Exchange need not be expreſsly averred to be within the Cuſtom of Merchants, but if, as ſet out in the Declaration, it appears to be within the Cuſtom it is ſufficient. *L. Raym.* 1542. *Mich.* 2 *Geo.* 2. *Ereſkine* v. *Murray.*

46. Plaintiff declared, that *M.* made his Bill of Exchange in Writing to *E.* the Defendant directed, and by the ſaid Bill requeſted the ſaid *E.* on ſuch a Day, to pay to *M.* the Plaintiff, or Order, 200*l. pro Valore in Manibus ipſius* E. *denariis Accommodatis de eodem* M. That *E.* accepted the Bill, and promiſed to pay, *&c.* Plaintiff had Judgment by *Nil dicit*, and in Error brought Exception was, that it was *not averred that the Bill was ſigned.* But as to this it was anſwered, that it was alledged *that* M. *made his Bill of Exchange in Writing, directed to the ſaid* E. *and by the ſaid Bill requeſted*, which neceſſarily implies the Plaintiff's Name wrote in the Bill, elſe he could not Requeſt, and the ſaying he made the Bill in Writing, imports, that he, or ſome Body by his Authority, wrote, which is all one, and imports a Signing, if it be neceſſary in Caſe of inland Bills of Exchange; and ſuch a way of declaring was held ſufficient in Caſe of Promiſſory Notes; where the Statute 3 and 4 *Ann.* Cap. 9. requires, that the Party that makes the Bill, or ſome Perſon intruſted by him, ſhould ſign it. And another Exception was, for that it was *de denariis Accommodatis* (*de eodem* M.) whereas it is Nonſenſe, and ſhould be (*per eundem* M.) But the Court held, that *pro Valore in Manibus ipſius* E. had been ſufficient, and that the other Words might be rejected as Surpluſage, and they held, that the Meaning was, *lent by the ſaid* M. though the *Latin* might not be ſo correct. And Judgment in *C. B.* was affirmed in *B. R. L. Raym.* 1542. *Mich.* 2. *Geo.* 2. *Ereſkine* v. *Murray.*

Barnard

Barnard. rep. in *B. R.* 87. *Eveſkyn* v. *Merry. S. C.* The Court ſaid, that indeed the Statute 9 and 10 *W.* 3. Cap. 17. required the Acceptance to be in Writing, where a Perſon would take Benefit of that Act, but it does not require in general, that the Acceptance ſhall be by Underwriting, but ſays that the Court ſeemed to think, that a ſigning is neceſſary to be laid in an Action upon a Promiſſory Note, to bring the Plaintiff within the Statute 3 and 4 *Anne*, Cap. 9. which requires it; but they doubted whether a Bill of Exchange ſhall not be conſidered as a technical Word, and conſequently will include the Circumſtances of ſigning, and affirmed the Judgment.

47. *A.* requeſted *B.* to let him have 50 *l.* in *London*, and he would draw a Bill on *C.* in the Country, *to repay it to* B. *as ſoon as* B. *ſhould return home. B.* gave two Bills to *A.* one for 20 *l.* and another for 30 *l.* payable at twenty Days Sight, which the Drawee accepted. On *B*'s Return, Drawee in the Country refuſed to pay *A*'s Bill. *B.* on this, writes to ſtop Payment of his Bills but one was paid before, and the Drawee refuſed to pay *A.* the other. Decreed *A.* to pay back the 20 *l.* received, and a perpetual Injunction againſt *A.* for the other 30 *l.* *Fin. R.* 356. *Paſch.* 30 *Car.* 2. *Hill* and *Penford* v. *Baker. Vin. Abr. Tit.* Bills of Exchange. *S.* 1.

48. Bill for Relief againſt a Bill of Exchange, on Pretence of its being gained by Threats or Menaces, is not proper for Equity, it being a Matter at Law, and *Dureſs* a good Plea there; but being gained by Fraud, and for a fictitious Conſideration it was relieved *per* Commiſſioners. 2 *Vern.* 123. pl. 123. *Hill*, 1690. *Dyer* v. *Tymewell.*

49. A Bill of Exchange was accepted by the Drawee, by underwriting his Name; but the Perſon to whom it became payable by Indorſement, loſt or miſlaid it; and the Drawee refuſing Payment, the Indorſee exhibited his Bill in Chancery, ſetting forth the Refuſal, and that he offered to give Security to the Defendant to indemnify him, and annexed an Affi-

davit

davit to the Bill of the loſing or miſlaying it. This being confeſſed by the Anſwer, it was objected that it did not appear by the Plaintiff's Affidavit that he had not aſſigned the Bill to another; but decreed that Defendant ſhould pay the Money, the Plaintiff giving Security to indemnify the Defendant, as the Maſter ſhall think reaſonable, againſt any Perſon that may hereafter demand the ſame. *Fin. Rep.* 301. 29 *Car.* 2. *Terceſe* v. *Geray. Vin. Abr. Tit.* Bills of Exchange. *R.* 1.

50. By Stat. 2 *Geo.* 2. C. 25. Sect. 1. if any Perſon ſhall forge, or procure to be forged, or aſſiſt in forging any (*inter alia*) Bill of Exchange, Promiſſory Note for Payment of Money, Indorſement, or Aſſignment of any Bill of Exchange or Promiſſory Note for Payment of Money, or any Acquittance or Receipt for Money or Goods: or ſhall utter or publiſh as true, any ſuch forged, *&c.* knowing the ſame to be forged with an Intent to defraud any Perſon; every ſuch Offender ſhall be guilty of Felony without Benefit of Clergy. And,

By Stat. 7 *Geo.* 2. C. 22. if any Perſon ſhall falſely make, alter or forge, or procure to be falſely made, *&c.* or aſſiſt in falſely making, *&c.* any Acceptance of any Bill of Exchange, or the Number, or principal Sum of any accountable Receipt for any Note, Bill, *&c.* or any Warrant or Order for Payment of Money or Delivery of Goods, or ſhall utter or publiſh any ſuch falſe Acceptance, Bill, *&c.* with Intent to defraud any Perſon; every ſuch Offender ſhall ſuffer Death as a felon without Benefit of Clergy.

SECT. XI.

Of the Evidence neceſſary to ſupport the Action on a Bill of Exchange.

1. *A.* Gives *B.* a Bill of Exchange on *C. in Payment of a former Debt*, this will not be allowed as Evidence on *Non Aſſumpſit* unleſs paid, though *B.* kept it in his Hands long after it was payable; for a Bill

Bill ſhall never go in Payment of a precedent Debt, unleſs it be Part of the Contract that it ſhould be ſo. 1 *Salk.* 124. pl. 1. *coram Holt*, Ch. J. at *Guildhall*, 3 *W.* and *M. Clarke* v. *Mundal.*

2. An Indorſer of a Bill of Exchange, who has paid it, muſt prove the Payment in an Action againſt the Acceptor. *L. Raym.* 742, 743. *Mendez* v. *Carreroon.* See this Caſe at large, P. 47. Parag. 8.

3. Indorſee need not prove the Drawer's Hand; becauſe, though it be *a forged Bill*, the Indorſer is bound to pay it. 1 *Salk.* 127. pl. 9. *Paſch.* 12 *W.* 3. *coram Holt* at *Guildhall. Lambert* v. *Pack.* See P. 60. Parag. 20.

4. Indorſee need not prove any Demand on Drawer. See P. 56. Parag. 17.

5. Plaintiff to ſhew a Proteſt, produced an Inſtrument atteſted by a Notary Publick; and though it was inſiſted upon that he ſhould prove this Inſtrument, or at leaſt give ſome Account how he came by it, *Holt* ruled it not to be neceſſary; for that, he ſaid, would deſtroy Commerce and publick Tranſactions of this Nature. 12 *Mod.* 345. *Mich.* 11 *W.* 3. at *Niſi Prius*, *coram Holt. Anon.*

6. If a Man has a Bill of Exchange, he may authorize another to indorſe his Name upon it by Parol; and when that is done, it is the ſame as if he had done it himſelf. *Per Holt*, Ch. J. 12 *Mod.* 564. *Mich.* 13 *W.* 3. at *Niſi Prius. Anon.*

7. Action on a Bill of Exchange, being by an Executor; and upon a Debt laid to be due to Teſtator, he held it neceſſary to prove the Acceptance was in the Teſtator's Time: *Per Holt*, Ch. J. 12 *Mod.* 447. at *Niſi Prius*, *coram Holt. Paſch.* 13 *W.* 3. *Anon.*

8. Plaintiff had a Bill of Exchange drawn on the Defendant, which he indorſed and delivered to *J. S.* who went to the Defendant to get it accepted. *J. S.* left it with him, and it was afterwards loſt; thereupon the Plaintiff brought Trover. The Court were all of Opinion, that the bare Indorſement, without

any other Words purporting an Aſſignment, does not makes an Alteration of the Property; for it may ſtill be filled up either with a Receipt or Aſſignment, and conſequently *J. S.* is a good Witneſs. 1 *Salk.* 130. pl. 15. *Paſch.* 2 *Ann. B. R. Lucas* v. *Haines.*

9. Demand muſt be made on the Acceptor of a Bill of Exchange or Maker of a Promiſſory Note before the Indorſer can be ſued. See Page 56. Par. 17.

10. As to Notice given by the Indorſee to the Acceptor before he commenced his Action, that he muſt provide the Money, it was offered in Evidence, that he gave him Notice by ſending him a Letter to do ſo. But the Chief Juſtice ſaid that he did not think the bare ſending a Letter to the Poſt-houſe would be ſufficient Evidence of Notice, without ſome further Proofs of the Acceptor's receiving it; and beſides he ſaid that generally a perſonal Demand is expected. *Barnard. Rep.* in *B. R.* 199, 200. *Trin.* 2 *Geo.* 2. *Dale* v. *Lubeck.*

11. To prove an Indorſement over a Bill of Exchange, it was offered that the Defendant had himſelf confeſſed that he was come to Town to haſten on the Trial of an Action that was brought againſt him, upon an Indorſement that he had made on a Bill of Exchange. And the Counſel ſaid that the very Cauſe was brought down by Proviſo; ſo that it is ſtrong Evidence that it is for the ſame Matter; and the Chief Juſtice at the Sittings at *Guildhall*, allowed this to be good Evidence of the Indorſement. *Barnard. Rep.* in *B. R.* 199. *Trin.* 2 *Geo.* 2. *Dale* v. *Lubeck.*

SECT.

SECT. XII.

Of the Damages recovered for Non-Payment.

1. INtereſt on a Bill of Exchange commences from the Time of the Demand made, and therefore, if there was no Demand made till Action, the Defendant may plead Tender and Refuſal, and * *Uncore priſt*, and ſo diſcharge himſelf of Intereſt; but if it be the Defendant's Fault that the Demand could not be made, as if he were out of the Kingdom, there Want of Demand ought not to prejudice the Plaintiff. *Per Cur.* 6 *Mod.* 138. *Paſch.* 3 *Ann. B. R. Anon.*

2. Drawee accepts the Bill, and ſome time after it is proteſted for Non-Payment, and thereupon the Bill is indorſed to the Drawer, who brought an Action as Indorſee, and held well, and Intereſt was ruled to be paid *from the Time of the Proteſt.* 10 *Mod.* 36. *Trin.* 10 *Anne*, *B. R. Louviere* and *Laubray.* See P. 46. Parag. 5.

3. Since the Statute 3 and 4 *Anne* (Page 18.) it hath been adjudged that an Indorſee of an inland Bill of Exchange may maintain an Action againſt the Acceptor, on a parol Acceptance, as to the principal Sum, though not as to Intereſt and Coſts; for the Act being made to give a further Remedy for Intereſt, Damages and Coſts againſt the Drawer, cannot be ſuppoſed to take any Advantage from the Payee which he had before; and therefore the true Conſtruction of the Act is, that to charge the Drawer with Intereſt and Coſts, the Drawee muſt refuſe to accept it in

* *Uncore priſt*, is a Plea of the Defendant that is ſued for a Debt due at a Day paſt, wherein he ſays that he tendered the Debt or Sum of Money due at the Time and Place, and there was none there to receive it; and that he is *ſtill ready* to pay the ſame. *Law Dict.*

Writing;

Writing; nevertheleſs if he accepts the Bill by parol, he is * liable to the principal Sum in the Bill, as he would have been before the Act. 3 *New Ab. Law*, 611, cites *Mich.* 8 *Geo.* 2. *B. R. Lumley* v. *Palmer.* See P. 27. Parag. 6 and 7.

SECT. XIII.

Of the Roman and French Laws concerning Bills of Exchange.

1. ONE ſingle Rule comprehends all that is in the Roman Law, touching this Matter; for by that Law, Bankers and others, who receive Money on Condition to deliver the ſame Sum at a certain Time, and in another Place, either themſelves, or by their Correſpondents, are obliged to pay the ſame, or cauſe it to be paid by others, at the Time and Place appointed: And if they fail to do it, they are anſwerable for all the Loſs and Damage which ſhall accrue thereby to him who gave the Money on this Condition, according as the ſaid Damage is regulated by Law, or Cuſtom †. Domat. Vol. I. p. 232.

2. In *France*, Bills of Exchange are regulated, according to the Ordinance of *March* 1673. Tit. 5. The Subſtance of which is as follows:

* So on the Statute 9 and 10 *W.* 3. which gives Damages and Coſts in Caſe of a Proteſt, it hath been held that that Statute did not take away the Party's Remedy againſt the Drawer, if there was no Proteſt, as to the principal Sum, but only as to the Damages and Coſts. 6 *Mod.* 80, 81. 1 *Salk.* 131. *Borough* v. *Perkins.*

† Si certo loco traditurum ſe quis ſtipulatus ſit, hac actione utendum erit. L. 7. § 1. *ff. de eo quod cert. loc.* Is qui certo loco dare promittit, nullo alio loco, quam in quo promiſit, ſolvere invito ſtipulatore poteſt. l. 9. eod. v. L. 1. C. *ubi conv. qui cert. loc. d. p.*

Art.

Art. 1.

Bills of Exchange ought to contain, in a conciſe Manner, the Names of thoſe to whom the Contents are to be paid, the Time of Payment, the Name of him who gave the Value, and whether it was received in Money, Merchandize, or otherwiſe.

Art. 4, 11, 12.

The Bearer of Bills of Exchange which have been accepted, or which become due at a Day certain, are obliged to get them paid, or to have them proteſted within ten Days after that on which they became due. And, after ſuch a Proteſt, they who have accepted them, can be proſecuted at the Suit of the Bearers: The ſame Bearers can alſo, with the Judges leave, ſeize the Effects of thoſe who have drawn or indorſed theſe Bills, though they were accepted, and even the Effects of thoſe on whom they were drawn, in caſe they accepted them.

Art. 13, 14, 15.

They who have drawn or indorſed Bills of Exchange, ought to be proſecuted within fifteen Days, if they dwell within the Diſtance of ten Leagues; if at a greater Diſtance, at the Rate of one Day more for every five Leagues, without Diſtinction of the Diſtricts of Parliaments: But this muſt be underſtood of ſuch Perſons only, whoſe dwelling Place is within the Kingdom of *France:* As for thoſe who dwell in other Countries, the delays are otherwiſe regulated.

They who dwell in *England*, *Flanders*, or *Holland*, ought to be proſecuted within two Months: In *Italy*, *Germany*, and *Switzerland*, within three Months; in *Spain*, within four Months; in *Portugal*, *Sweden*, and *Denmark*, within ſix Months: All thoſe ſeveral Terms muſt be reckoned from the Day next following that, on which the Proteſt was made, to that on which the Proſecution is begun incluſively, without Diſtinction of *Sundays* or Holidays; after which

Terms,

Terms, the Bearers of Bills of Exchange, have no longer any Action or Demand againſt the Drawers and Indorſers.

Art. 16, 17.

The Drawers and Indorſers of Bills of Exchange are obliged to prove, in caſe it be deſired, that thoſe on whom they have drawn them, were indebted to them, or had Money in their Hands, at the Time the Bills were to be proteſted, otherwiſe they are obliged to make them good; and in caſe the Drawers or Indorſers had, ſince the Time limited for the Proteſt, received the Value either in Money, Merchandize, by Account, Compenſation, or otherwiſe, they are obliged to make thoſe Bills good.

Art. 18, 19.

Bills of Exchange payable to a particular Perſon, and not to the Bearer or Order, being loſt or miſlaid, Payment may be demanded and made, by Virtue of a ſecond Letter, without giving Security, provided, nevertheleſs, mention be made of its being a ſecond Bill, and that the firſt, or preceding, ſhall remain void and null. But when a Bill, payable to the Bearer or Order, happens to be loſt or miſlaid, it ought not to be paid but by an Order from the Magiſtrate, and by giving Security to Anſwer for the Payment.

Art. 20.

The Securities given for the Payment of Bills of Exchange, are diſcharged of Courſe, without any Sentence, Proceeding, or Summons, if no Demand was made during three Years, reckoning from the Day of the laſt Proſecution.

Art. 21.

A Bill of Exchange is reputed to be acquitted or paid, when no demand or proceeding was made during five Years, reckoning from the Day next following

that

that on which it was due, or proteſted, or the laſt proceeding made. Nevertheleſs, the pretended Debtors are obliged, if thereto required, to declare, that they are not indebted: and their Widows, Heirs or Aſſigns muſt affirm, that they ſincerely believe there is nothing due.

Art. 22.

What has been obſerved in the two laſt Articles, ought to take Place alſo with Regard to Minors and abſent Perſons.

Art. 23, 24, 25.

A bare Signature on the Back of a Bill of Exchange is looked upon only as an Indorſement, and not as an Order, unleſs it be dated, and the Perſon's Name be mentioned, who paid the Value, either in Money, Merchandize, or otherwiſe. And a Bill, thus indorſed, is reckoned the Property of him whoſe Name is mentioned in the Order, without any Tranſfer or Notification: But, on the contrary, if there be only a blank Indorſement, that is to ſay, the bare Signature of the Proprietor, it ſhould be reckoned to belong ſtill to him, who thus put his Name on the Back of it, and ſuch might be ſeized by his Creditors, and brought into Account to his Debtors.

Art. 26.

It is abſolutely forbidden to Antedate any Order, upon Pain of Forgery.

Art. 27.

They who ſubſcribe a Bill of Exchange (which Subſcription the French call *Aval)* whereby they bind themſelves to pay the Contents: in caſe it be not paid, when due, by the Acceptor, or Drawer, become thereby bound to the Drawer, Indorſer, and Acceptor, though it be not mentioned in the Subſcription or *Aval.*

Finally, the firſt Article of the 7th Title of the ſame Ordinance orders, that they who have ſigned Bills of Exchange, and even they who put their *Aval* to them, may be arreſted; which is to be underſtood, in caſe the Bills be not paid.

As, in the Ordinance iſſued in the Year 1673, it was impoſſible to foreſee all the different Caſes that might ariſe in the Negociation of Bills of Exchange, though as we have ſeen, that Ordinance enters into very minute Particulars upon that Subject, there have been given ſince ſeveral Declarations of the King and Decrees of the Parliament, which have interpreted or explained ſeveral Articles of that Ordinance, and added ſome new ones to it.

By the Declaration iſſued in *May* 1686, it is ordered, by Way of Explanation of the Ordinance of 1673, that the fourth Article of it be obſerved according to its Form and Contents; and that, accordingly, the ten Days granted for proteſting Bills and Notes of Exchange ſhould not be reckoned but from the Day following that, on which the ſaid Bills and Notes became due; that the Day on which they became due, ſhould not be reckoned among the ten, but only that on which the Proteſt was made, as well as *Sundays* and Holidays, even the moſt ſolemn Feſtivals, which ſhould fall within the Space of the ten Days; notwithſtanding all Orders and Cuſtoms to the contrary, even the 6th Article of the ſaid Ordinance of 1673. which Article is abrogated, in that Reſpect, by this laſt-mentioned Declaration.

By a Sentence of the *Chatelet* of *Paris*, given the 31ſt of *Auguſt* 1708, it was declared, that the Limitation of Time, eſtabliſhed by the 15th Article of the 5th Title of the Ordinance of the Year 1673, with Regard to the Bearers of Bills of Exchange, who neglect to proſecute the Indorſers, within the Term ſet down in the 13th Article of the ſame Title, ſhould take Place, as well with Regard to the Indorſers of Notes payable to the Bearer, as with Regard to the Indorſers of Bills of Exchange.

By

By a Decree of the Parliament, in the Form of a Regulation, made the 30th of *Auguſt* 1714, it is ordered, that in Caſe a Bill of Exchange, on which are ſeveral Indorſers, be loſt, the Owner ſhall apply to the laſt Indorſer, and not to the Drawer, in order to have a ſecond Bill.

The frequent Augmentations and Diminutions of the Coin in *France*, which happened during the Reign of *Lewis* XIV. and which the neceſſity of the State cauſed to be continued during the firſt Years of *Lewis* XV. having occaſioned many Diſputes, with Regard to the Payment of Bills and Notes of Exchange, they were obviated by two Declarations; the one of the 16th of *March* 1700, and the other of the 28th of *November* 1713, and by a Decree of the Council given the 27th of *May* 1719.

By the firſt of theſe Declarations, the Bearers of Bills and Notes of Exchange, or Bills payable to the Bearer, are obliged, ten Days after they become due, to cauſe Payment to be demanded of the Debtors, by a Summons, containing the Names, Qualities, and dwelling Places of the ſaid Bearers, offering to receive the Payment of ſuch Bills or Notes in current Specie: And, if the Bearers omit to make ſuch a Demand within the limited Time, they ſhall be liable to ſuffer from the Diminution that might happen in the current Specie.

The ſecond Declaration confirms and explains the former, and orders, that, reciprocally, it ſhall not be in the Power of the Debtors of ſuch Bills or Notes, to oblige the Bearers to receive the Payment of them before the tenth Day after they become due. And with Regard to Promiſſory Notes for Value received in Merchandize, which according to Cuſtom, are not paid till a Month after they are due, the Debtors of ſuch Notes ſhall not oblige the Bearers to receive Payment before the ſame Day. Nevertheleſs, his Majeſty's Will and Pleaſure is, that they, who ſhall have given Notes for Merchandize, the Diſcount of

which was agreed upon, ſhall be at Liberty to diſcharge them, provided Payment be made full thirty Days before that appointed for the Diminution of the Specie.

The Decree of the Council, given the 27th of *May* 1719, contains a Regulation for the Payment of the Bills of Exchange, drawn or indorſed in foreign Countries, particularly in *England* and *Holland*. His Majeſty orders, that the Bills drawn from *Holland*, before the Augmentation of the 1ſt of *May* 1718, be paid in Crowns of five Livres: and that thoſe drawn, before the Diminution of the 8th of *May* 1719, could be known there, be paid in *Louis D'ors* of 36 Livres; and with Regard to the Bills drawn from *England*, before, and due ſince, the ſaid Diminution, be alſo paid in *Louis D'ors* of 36 Livres; with Liberty, however, to the Bearer, to cauſe himſelf to be reimburſed, by the Perſon who pays the Bill, twenty Sols *per Louis D'or*, in Caſe the definitive Sentence, which was to be given in *England*, ſhould order, that the Bills drawn before, and due ſince, the known Augmentation of the 1ſt of *May* 1718, were to be paid in Crowns of ſix Livres. *

* In the whole *Journal du Palais*, which is a Collection in nine Volumes of the Deciſions of all the Parliaments and Sovereign Judicatures in *France* for many Years, there are not above three or four Deciſions relating to Bills of Exchange: The Reaſon whereof is, becauſe in all the trading Towns of *France*, eſtabliſhed Courts Merchant take Cognizance of Differences between Perſons of that Profeſſion, in a ſummary Manner, except where the intervening of ſome nice Points of Law, render Merchants incompetent Judges, which are carried before the Parliament.

SECT.

SECT. XIV.

Of the Laws of Scotland *concerning Bills of Exchange.*

1. THE Foundation hereof depends upon the 20 *Act.* 3 Parl. King *Charles* II. which is as follows: "Our Sovereign Lord, conſidering how "neceſſary it is for the flouriſhing of Trade, that "Bills or Letters of Exchange be duly paid, and "have ready Execution, conform to the Cuſtom of "other Parts, doth therefore, with Advice and Con-"ſent of his Eſtates of Parliament, ſtatute and or-"dain, that *foreign* Bills of Exchange, from or to "this Realm, duly proteſted for Not-Acceptance, "or for Not-Payment, the ſaid Proteſt having the "Bill of Exchange prefixed, is regiſterable (may be "regiſtered) within ſix Months after the Date of the "ſaid Bill, in Caſe of Not-acceptance, or after the "falling due thereof, in Caſe of Not-Payment, in "the Books of Council and Seſſion, or other compe-"tent Judicatures, at the Inſtance of the Perſon to "whom the ſame is made payable, or his Order, ei-"ther againſt the Drawer or Indorſer, in Caſe of a "Proteſt for Not-Acceptance, or againſt the Accep-"tor, in Caſe of a Proteſt for Not-Payment, to the "Effect it may have the Authority of the Judges "thereof interponed thereto, that Letters of * horn-"ing upon a ſimple Charge of ſix Days, and other "† Executorials neceſſary may paſs thereupon, for the "whole Sums contained in the Bill, as well Ex-

* Theſe are Warrants iſſued in the King's Name to charge Perſons to pay Debts, or perform Deeds, within a prefixed Time, upon Pain of being declared outlawed by three Blaſts of a Meſſenger's Horn, in Caſe of Diſobedience.

† By which is to be underſtood, the ordinary Diligence required by the Laws of *Scotland*, for compelling a Man to pay his Debts; ſuch as Caption, or Execution of the Body, whereby his Perſon is ſeized, and put under reſtraint, *&c. &c.*

" change as Principal, in Form as Effeirs: Sicklike, " and in the ſame manner, as upon regiſtrate * Bonds, " or Decrees of Regiſtration, proceeding upon Con- " ſent of Parties. Provided always, that if the ſaid " Proteſts be not duly regiſtrate in ſix Months in " Manner above provided, then, and in that Caſe, " the ſaid Bills and Proteſts are not to have ſummary " Execution, but only to be purſued [ſued for] by " Way of ordinary Action, as Accords. And far- " ther, the Sums, in all Bills of Exchange, bear an- " nual Rent [Intereſt] in Caſe of Not-acceptance, " from the Date thereof, and in Caſe of Acceptance, " and Not-payment, from the Day of their falling " due, ay and while [until] the Payment thereof. " And farther, Notwithſtanding the foreſaid ſumma- " ry Execution provided to follow upon Bills of Ex- " change, for the Sums therein contained, in Manner " above ſpecified: Yet it is leeſome [lawful] to the " Party Charger to purſue [ſue] for the Exchange, if " not contained in the ſaid Bills, with Re-Exchange, " Damage, Intereſt, and all Expences, before the " ordinary Judge, or, in Caſe of ‡ Suſpenſion, to eik " [add] the ſame to the Charge, at the diſcuſſing of " the ſaid Suſpenſion, to the Effect that the ſame " may be liquidate, and Decreet [Decree or Sentence " of the Court] given therefore, either againſt the " Party Principal, or againſt him and his Caution- " ers, as accords."

2. This Act mentions only *foreign* Bills, and not ſuch as are drawn from one Place within *Scotland* to another, or inland Bills: which was ſo ordered, leſt People had been tempted, with the Privilege of ſum-

* Bonds, or Obligations of Record.

‡ Suſpenſion is a ſtopping of Execution either for a Time, or for ever, upon Reaſons inſtantly verified or proved by Writing, or Oath of the Party, unleſs they conſiſt in Matter of Fact, and may be proved by Witneſſes, or be founded upon another Man's writing, as when Sureties ſuſpend upon Diſcharges granted to the principal Debtor.

mary Execution, to conſtitute all their Debts by Bills, and none by Bonds.

3. But the like Execution paſſes now upon all inland Bills, as is appointed to paſs upon foreign Bills by the above-mentioned Act: Which Statute is extended, in all Points, to inland † Bills and Precepts.

4. Inland Bills and Precepts muſt alſo be negociated as foreign Bills, by duely preſenting them, proteſting for Not-acceptance, and Not payment, and adviſing the Drawer, or laſt Indorſer thereof. So the Poſſeſſor of any inland Precept granted by his Debtor in a Bond, not having proteſted the ſame for Not-payment, nor done any Diligence againſt the Acceptor of the Precept, till he broke, was found to have no Recourſe for Payment againſt the Drawer or his Cautioner in the Bond. 10 *July* 1706, *Brand* contra *Yorſton*.

5. Promiſſory Notes have not the ſame Privilege in *Scotland* as foreign and inland Bills of Exchange. A Merchant's Note payable to others, or Order, at ſuch a Place, or at any other Place, with the current Exchange, was found to be only a ſimple Ticket, and not of the Nature of a Bill of Exchange, in Reſpect there was not a Drawer and Acceptor, and therefore null for Want of a Writer and Witneſſes Names and Deſignations or Additions. 29 *Jan.* 1708, *Arbuthnot* contra *Scot*.

6. The like Note, whereby one promiſed to pay to a Perſon, or order, a Sum, value received, being indorſed to a third Party, was for the ſame Reaſon compacted with the Indorſer's * Debt. Nor doth the *Engliſh* Statute of 3 and 4 *Ann.* Cap. 9. giving the like Remedy upon Promiſſory Notes, as is now uſed upon Bills of Exchange, for three Years, though made perpetual by an Act of the *Britiſh* Parliament

† By Act 36. Seſſ. 6. Parl. King W.

* 12, *Feb.* 1708, *Bundie* contra *Kennedy*.

ſince the Union †, extend to Promiſſory Notes in ‡ *Scotland*, becauſe the *Britiſh* Statute doth only make the former, which was a temporary Law of *England*, to have perpetual Force there; and, being but an acceſſary, can go no further than the Statute of *England* it was calculated to continue.

† 7 *Ann.* Cap. 25. See Page 119.
‡ 6 *Dec.* 1711, *King* contra *Eſdale*.

CHAP.

CHAP. II.

Of PROMISSORY *and* CASH NOTES.

SECT. I.

Of Promiſſory Notes at common Law, and the Statute 3 *and* 4 Anne *concerning them.*

1. AS no Action could be maintained on Promiſſory Notes, nor were they aſſignable at common Law *, the Increaſe of Trade and Neceſſity of Paper Credit put Bankers and others upon an Expedient of bringing them within the Cuſtom of Merchants, and making them negotiable as inland Bills of Exchange; but this the Judges would

* This appears from the Preamble of the Stat. 3 and 4 *Anne* (See next Page) and the following Authorities: A Note was given by the Defendant, whereby he promiſed to pay the Plaintiff, or Order ſo much Money. The Plaintiff brought an Action on this Note, and declared on the Cuſtom of Merchants, and likewiſe laid a general *Indebitatus Aſſumpſit*, and on the general Iſſue entire Damages were given. Upon Motion in Arreſt of Judgment, the Court held that this is not within the Cuſtom of Merchants, and being no Specialty, no Action can be grounded on it: Then it was anſwered, that being void, no Damages could be intended to be given for it. *Sed non allocatur*; for it is not a Matter inſenſible, but inſufficient in Law. And Judgment was arreſted. 1 *Salk.* 129. *Paſch.* 1 *Anne. B. R. Clerk* and *Martin.*

Error of a Judgment in the Common Pleas on a like Note; the Plaintiff declared, that there was a Cuſtom within *London* among Merchants trading there, that if a Merchant ſigned a Note, promiſing to pay *J. S.* or Order, *&c.* that he became bound by the Cuſtom to pay, *&c.* And *A. Cherley* would have diſtinguiſhed this from the foregoing Caſe; being laid as a ſpecial Cuſtom in *London*, and that confeſſed by the Judgment by *nil dicit*. *Sed per Holt*, Chief Juſtice. This Cuſtom to oblige one to pay by Note without Conſideration is void and againſt Law. *Ex nudo pacto non oritur Actio.* The Judgment was reverſed. 1 *Salk.* 120. *Pottet* v. *Pearſon.*

not

not admit of: Promiſſory Notes being only conſidered by the common Law, as Evidences of a Debt, and not aſſignable or negotiable in their own Nature. 3 *New. Abr. Law*, 605.

2. But it being found neceſſary to make Uſe of this kind of Credit, by the 3 and 4 *Anne*, Cap. 9. (made perpetual by 7 *Anne*) reciting, that whereas it hath been held, that Notes in Writing, ſigned by the Party, who makes the ſame, whereby ſuch Party promiſes to pay unto any other Perſon, or his Order, any Sum of Money therein mentioned, are not aſſignable or indorſible over within the Cuſtom of Merchants to any other Perſon; and that ſuch Perſon, to whom the Sum of Money mentioned in ſuch Note is payable, cannot maintain an Action, by the Cuſtom of Merchants againſt the Perſon who firſt made and ſigned the ſame; and that any Perſon to whom ſuch Note ſhall be aſſigned, indorſed, or made payable, could not within the ſaid Cuſtom of Merchants, maintain any Action upon ſuch Note againſt the Perſon who firſt drew and ſigned the ſame: therefore to the intent to encourage Trade and Commerce, which will be much advanced, if ſuch Notes ſhall have the ſame Effect as inland Bills of Exchange, and ſhall be negotiated in like Manner, it is enacted, "That all "Notes in Writing, that ſhall be made and ſigned "by any Perſon or Perſons, Body politick or corpo- "rate, or by the Servant or Agent of any Corpora- "tion, Banker, Goldſmith, Merchant, or Trader, "who is uſually intruſted by him, her or them, to "ſign ſuch Promiſſory Notes for him, her, or them, "whereby ſuch Perſon or Perſons, Body Politick and "Corporate, his, her, or their Servant or Agent as "aforeſaid, doth or ſhall promiſe to pay to any other "Perſon or Perſons, Body Politick and Corporate, "his, her, or their Order, or unto Bearer, any Sum "of Money mentioned in ſuch Note, ſhall be taken "and conſtrued to be, by virtue thereof, due and "payable to any ſuch Perſon or Perſons, Body Po- "litick and Corporate, to whom the ſame is made

"payable;

" payable; and alſo every ſuch Note payable to any " ſuch Perſon or Perſons, Body Politick and Cor- " porate, his, her, or their Order, ſhall be aſ- " ſignable or indorſible over, in the ſame Manner " as inland Bills of Exchange are or may be, ac- " cording to the Cuſtom of Merchants; and that " the Perſon or Perſons, Body Politick and Corpo- " rate, to whom ſuch Sum of Money is or ſhall be " by ſuch Note made payable, ſhall and may main- " tain an Action for the ſame, in ſuch Manner as he, " ſhe, or they might do, upon an inland Bill of Ex- " change, made or drawn according to the Cuſtom " of Merchants, againſt the Perſon or Perſons, Body " Politick and Corporate, who, or whoſe Servant or " Agent as aforeſaid, ſigned the ſame; and that " any Perſon or Perſons, Body Corporate and Poli- " tick, to whom ſuch Note that is payable to any " Perſon or Perſons, Body Politick and Corporate, " his, her, or their Order, is indorſed or aſſigned, " or the Money therein mentioned, ordered to be " paid by Indorſement thereon, ſhall and may main- " tain his, her, or their Action for ſuch Sum of Mo- " ney, either againſt the Perſon or Perſons, Body " Politick and Corporate, who or whoſe Servant or " Agent as aforeſaid, ſigned ſuch Note, or againſt " any of the Perſons that indorſed the ſame in like " Manner as in the Caſe of inland Bills of Exchange; " and in every ſuch Action the Plaintiff or Plaintiffs " ſhall recover his, her, or their Damages and Coſts " of Suit; and if ſuch Plaintiff or Plaintiffs ſhall be " non-ſuited or a Verdict be given againſt him, her, " or them, the Defendant or Defendants ſhall recover " his, her, or their Coſts againſt the Plaintiff or Plain- " tiffs; and every ſuch Plaintiff or Plaintiffs, De- " fendant or Defendants reſpectively recovering, may " ſue out Execution for ſuch Damages and Coſts by " *Capias*, *Fieri Facias*, or *Elegit*."

And it is further enacted by the ſaid Statute, " That all and every ſuch Action ſhall be com- " menced, ſued, and brought within ſuch Time as

" is

" is appointed for commencing or ſuing ſuch Actions " upon the Caſe, by the Statute 21 *Jac.* 1. of Limi- " tations.

" Provided, that no Body Politick or Corporate " ſhall have Power, by Virtue of this Act, to iſſue " or give out any Notes by themſelves or their Ser- " vants, other than ſuch as they might have iſſued " if this Act had never been made."

3. It hath been adjudged, that a Note wrote by the Plaintiff and ſubſcribed by the Defendant, is a Note *made and ſigned* by the Defendant within this Act: for the ſigning or ſubſcribing is the Lien, and the writing or making is the mechanical Part of it. 3 *New Abr. Law*, 606, cites *Trin.* 6 *Ann. Aſh* v. *Baron* in *B R.*

4. This was a Motion for an Injunction, and the Caſe was, A Note was given by the Defendant as Truſtee for the Executrix of *Fowler*, for ſome Share in the *Aſſiento* Braſs and Copper-mines to the Plaintiff *Brown*, who was an original Undertaker in ſetting on Foot that Bubble. And here it was very much diſputed, whether the Plaintiff ſhould be left to Law upon this Note; for that thoſe Mines were a mere Bubble, and had no Exiſtence *in rerum natura*; and *Fowler* was an innocent Perſon, that only ſold the Shares that he had bought, and the Plaintiff was the original Undertaker of the Project. In this Caſe it was very much diſputed, whether the Defendant could give any Thing in Evidence to ſhew that the Note wanted a Conſideration. The Court was equally divided, and two Judges were of Opinion, that upon Promiſſory Notes, the Want of a Conſideration could not be given in Evidence; for the Words of the Statute of 3 and 4 *Ann. Cap.* 9. touching Promiſſory Notes are, " That all Notes in writing, that " after the firſt Day of *May*, *Anno Dom.* 1705, ſhall " be made and ſigned by any Perſon or Perſons, " Bodies Politick or Corporate, or by the Servant " or Agent of any Corporation, Banker, Goldſmith, " Merchant or Trader, who is actually intruſted by

" him,

" him, her, or them, to ſign ſuch Promiſſory Notes for " her, him, or them, whereby ſuch Perſon or " Perſons, Bodies Politick or Corporate, his or their " Servant or Agent as aforeſaid, doth or ſhall Pro- " miſe to pay to any other Perſon or Perſons, Bodies " Politick or Corporate, his or their Order or Bearer, " any Sum or Sums of Money, mentioned in ſuch " Note, ſhall be taken and conſtrued to be, by Virtue " thereof, due and payable to any ſuch Perſon " or Perſons, Bodies Politick or Corporate, to whom " the ſame is made payable." The two puiſne Judges were therefore of Opinion, that ſince the Statute made it payable by Virtue of the Note, that the Conſideration of the Note was not inquirable, no more than the Conſideration of a Bond; and on a Bond the Defendant can only plead *non eſt factum* in a Court of Law, and if it were ſealed and delivered, which were the only Solemnites of Contracting, appointed by the Law, nothing could be given in Evidence touching the Conſideration.

The other two Judges thought there was a great Difference between a Note and a Bond, notwithſtanding the Statute; for in the Caſe of the Bond, where there were Solemnities of Contracting, *viz.* the Sealing and Delivery, if there was no Conſideration, yet if there was no Fraud in obtaining the Bond, the Money was a Gift in Law to the Obligee; but the Note was no more than a ſimple Contract, and notwithſtanding the Statute ſays, that the Money ſhall be due and payable by Virtue of the Note, that only makes the Note itſelf Evidence of the Conſideration, which it was not before the Statute, as appears by the Caſe of *Clerk* v. *Martin*, and *Potter* v. *Pearſon*, 1 *Salk.* 129. But though the Note itſelf be Evidence of a Conſideration, yet it is not concluſive Evidence, but turns the Proof upon the Defendant, to ſhew that there was no Conſideration given for ſuch a Note; and ſo he can ſhew that it is ſtill but a ſimple Contract, and therefore but a *nudum pactum unde non*

oritur actio, and of this Opinion was my Lord Chancellor *King*, and moved to rule it ſo at *Niſi Prius*.

But in this Caſe an Injunction was granted on Terms, the Defendant agreeing to give Judgment, with a Releaſe of Errors ſubject to Order on the Hearing.

Note, This Matter was very much diſputed in the Hall, and this Caſe was put, that if *A.* forged a Bank Note, and gave it as a Conſideration to *B.* for *B.*'s Note; or if *A.* ſhould have given Braſs-Money for his Note, could not this Want of Conſideration be given in Evidence? If not, *A.* might recover againſt *B.* where there was no Debt; and certainly the Statute did not deſign that a Man ſhould recover where there was no Debt at all; for the Statute only makes Promiſſory Notes as Bills of Exchange; and though the Acceptor and Indorſer were bound to pay thoſe Bills, whether they had received any Conſideration or not, becauſe the Acceptor accepts it for the Honour of the Drawer, and the Indorſer negotiates it; yet the Drawer of the Bill was not obliged to pay it to the Perſon, in whoſe Behalf the Bill was drawn, unleſs he had paid him a Conſideration; but the owning a *Value received* was Evidence *prima facie*, that a Conſideration was paid to the Drawer of the Bill. Vid. 1 *Salk.* 125. 4 *Mod.* 242, 244. *Gilbert's Rep.* 154.

SECT. II.

What ſhall be deemed a negotiable Note within this Statute.

1. THERE are no preciſe Words neceſſary to be uſed in a Promiſſory Note. *L. Raym.* 1397. *Trin.* 11 *Geo.* 1. cites *Raſt.* 338. But if the Promiſſory Note is within the Intent of the Act it is ſufficient: tho' it does not follow the very Words of the Act.

2. A Note was, *I promiſe to pay* 50 *l. or render the Body of* J. S. to *Priſon before ſuch a Day*; it was adjudged to be no negotiable Note within the Act of Parliament,

Parliament, and that an Action could not be maintained on that Note within that Law; becauſe the Money was not abſolutely payable, but depended upon a Contingency, whether he would ſurrender *J. S.* to Priſon or not; cited *per Cur. L. Raym.* 1362. *Mich.* 1 *Geo.* 1. *Smith* v. *Boheme. S. C.* cited *L. Raym.* 1296. *S. C.* cited 8 *Mod.* 362. arg. and admitted by the other Side.

3. It hath been reſolved, that if *A.* give a Note to *B.* for the Payment of a Sum of Money, *when he the ſaid* A. *ſhould marry ſuch a one*; *B.* cannot bring an Action on ſuch Note, and declare as on a Bill of Exchange, ſetting forth the Cuſtom of Merchants, *&c.* for that in Truth there is no ſuch Cuſtom, being only an Agreement founded on a Marriage-brokage, and to pay Money on a collateral Contingency; which Contingency cannot be called Trading, ſo as to come within the Cuſtom of Merchants. 3 *New Abr. Law.* 606. 4 *Mod.* 242. *Cumb.* 227. *S. C. Pearſon* v. *Garret.*

4. A Promiſſory Note to pay within ſo many Days after the Defendant ſhould marry, was on Conſideration held not to be a negotiable Note within the Statute. *Stran.* 1151. *Beardeſly* v. *Baldwin.*

5. The Indorſee brought an Action againſt the Drawer of a Note, by which he *promiſed to account with* T. S. *or his Order for* 50*l. Value received* by him, *&c. Per Cur.* the Statute of 3 and 4 *Anne*, Cap. 9. was made for the Eaſe of Trade, and it is a *remedial Law*, for which Reaſon it ſhall be extended as far as poſſible; therefore the Words in this Note, by which the Drawer promiſes to be *accountable* to *T. S.* for 50*l.* ſhall be conſtrued as a Promiſe to pay the Money, and the rather, becauſe it is to be accountable to *T. S. or his Order*; but it is impoſſible for him to account with the Indorſee, therefore it muſt be to pay; beſides this muſt be originally either a Debt or a Truſt, and nothing appears in the Note to make it a Truſt, therefore it muſt be a Debt. As to the objection that the Drawer may be a Factor, and might apply this Money for the Uſe of the Drawee; the Words in this Note will

will not make him a Factor, *viz. I promiſe to be accountable for ſo much Money*, &c. For the Money muſt be received to Account, as well as the Promiſe made to Account; therefore the Word *accountable* in this Caſe ſhall be taken *to pay*; and the Difference is, when it is to be *accountable for ſo much Money Value received*, and when it is *Value received on Account*, or, *to Account*, or, *as by Account*, as it is uſual between Merchant and Factor, or Lord and Steward; and it would be dangerous to the Credit of thoſe Notes, if this ſhould not be good: Therefore Judgment was given for the Plaintiff. 8 *Mod.* 363, 364. *Paſch.* 11 *Geo.* 1. *Norris* v. *Lee.* *L. Raym.* 1396. *S. C. Powis* J. relied much upon the Verdict in this Caſe; but *Forteſcue* J. *Reynolds* J. and *Raym.* Ch. J. were of Opinion, that if the Note was not within the Act, the Verdict could not help it; but the Note would be within the Act, or not upon the Words of the Note: and Judgment for the Plaintiff. *S. C. Stran.* 629.

6. Caſe upon a Promiſſory Note *to pay within two Months after ſuch a Ship is paid off*, and declares upon the Statute.

It was inſiſted, that this is not negotiable, it being upon a Contingency which may never happen. *Jocelyn* v. *Laſerre* (P. 22.) was a Bill to pay out of the Drawer's growing Subſiſtence; and that was held not to be negotiable as a Bill of Exchange. *Sed per Cur.* the paying of the Ship is a Thing of a public Nature, and this is negotiable as a Promiſſory Note. *Stran.* 24. *Andrews* v. *Franklin.*

7. Upon Demurrer to a Declaration on the following Note, it was held to be a Note within the Statute: "I acknowledge that Sir *Andrew Chadwick* had deli- "vered me all the Bonds and Notes, for which 400*l.* "were paid on Account of Colonel *Synge*, and that "Sir *Andrew* delivered me Major *Graham*'s Receipt "and Bill on me for 10*l.* which 10*l.* and 15*l.* 5*s.* "Balance due to Sir *Andrew*, I am ſtill indebted, "and do promiſe to pay." Judgment for the Plaintiff. *Stran.* 706. *Chadwick* v. *Allen.*

8. An

8. An Action was brought upon a Note given by the Plaintiff to the Defendant in the following Form; *I promiſe to pay Mr.* James Lewis *Eleven Pounds at the Payment of the Ship* Devonſhire, *for Value received.* The Plaintiff declared, as upon the Statute of Queen *Anne*, taking it to be a Note within the Statute.

Marſh for the Defendant objects, that 'tis not a Note within the Statute: 1ſt, becauſe not payable to Order, or Bearer; and, 2dly, becauſe of the Contingency of the Time of Payment.

Hardwicke Chief Juſtice. It has been long ſettled, that the Statute does not require a particular certain Form, and ſaid he remembered a Caſe in this Court where it was held on Demurrer, that a Note to be within the Statute needed not to be payable *to Order.* And in that Caſe it was urged, that it might as well be ſaid every Note within the Statute ſhould be payable *to Order or Bearer*; for they are the Words of the Statute. As to the Contingency of the Payment, the ſubſequent Act of the Payment of the Ship makes it certain; and therefore tho' not a Lien *ab initio*, yet became ſufficiently ſo, and within the Statute by the Fact happening after. It is not like the Caſe of *Jocelyn* and *Laſerre* (P. 22) where it was held that a Bill of Exchange, payable out of a particular Fund for growing Subſiſtence, was not within the Statute. I think therefore the Declaration is proper enough; But you may make your Objection in Arreſt of Judgment; for this will appear on the Record. *Dict. Tr. and Com.* 261. *Lewis* v. *Orde.* 2 Sittings in *Middleſex*, 8 *Geo.* 2.

9. On Error from *C. B.* a Note *to pay to A. or Order, ſix Weeks after the Death of the Defendant's Father, for Value received,* was held to be a negotiable Note within the Statute 3 *Anne* C. 9. for there is no Contingency whereby it may never become payable, but it is only uncertain as to the Time, which is the Caſe of all Bills payable at ſo many Days after Sight. In the Common Pleas it held three Arguments, and was

held good upon a ſolemn Reſolution delivered by Chief Juſtice *Willes*. *Stran.* 1217. 18 *Geo.* 2. *Cook* v. *Colehan*.

10. The Court held on Error from *C. B.* that a Note to deliver up Horſes, and a Wharf, and pay Money at a particular Day, could not be counted on as a Note within the Statute, and therefore reverſed the Judgment. *Stran.* 1271. *Martin* v. *Chauntry*.

11. Error of a Judgment in *C. B.* in Caſe upon a Promiſſory Note entered into by *A* to pay ſo much to *B.* for a Debt due from *C.* to the ſaid *B.* And it was objected, that this not being for Value received was not within the Statute, and *prima facie* the Debt of another is no Conſideration to raiſe a Promiſe. But the Court held it be within the Statute, being an abſolute Promiſe, and every way as negotiable as if it had been generally for Value received. And the Judgment was affirmed. *Stran.* 264. 6 *Geo.* 1. *Popplewell* v. *Wilſon*.

12. *I promiſe to pay to* W. 100*l.* *in three Months after Date, Value received of the Premiſſes in* Roſemary Lane, *late in the Poſſeſſion of T. R.* Upon a Demurrer, the Court held this clearly a Promiſſory Note within the Statute 3 and 4 *Anne*, Cap. 9. and Judgment for the Plaintiff. *L. Raym.* 1545. *Mich.* 2 *Geo.* 1. *Burchell* v. *Slocock*.

13. *I promiſe to pay to* T. S. 50*l.* *if* J. S. *doth not pay it within ſix Weeks.* Action was brought on this Note, and Verdict was for the Plaintiff; but Judgment was arreſted, becauſe the Drawer was not the original Debtor, but might be a *Debtor on Contingency*. *Arg.* 8. *Mod.* 363. *Paſch.* 11 *Geo.* 1. cites it as the Caſe of *Appleby* v. *Biddolph*.

SECT.

SECT. III.

Who may indorſe Promiſſory Notes.

1. ON Error from *C. B.* it appeared to be an Action by Indorſee of a Promiſſory Note indorſed by a Woman as Adminiſtratrix. A Demurrer to the Declaration and Judgment for the Plaintiff.

It was objected, that an Adminiſtratrix was not within the Cuſtom of Merchants in the Caſe of Bills of Exchange. And the Statute 3 *Anne*, C. 9. makes Notes aſſignable only in the ſame Manner as Bills of Exchange are. *Sed per Curiam*, we cannot ſay this upon a Demurrer. It ſhould have been pleaded or found not to be within the Cuſtom; and it is every Day's Practice to have Indorſements made by Executors. It was then objected that there was no *Profert* of the Letters of Adminiſtration. *Sed per Curiam*, that is only required, where the Action is by an Adminiſtrator, but not where a third Perſon only derives *through* one. The Judgment was affirmed. *Stran.* 1260. *Robinſon* v. *Stone*.

2. A Note payable to a *Feme Sole*, or Order, who afterwards marries, can only be indorſed by the Huſband. 3 *New Abr. Law*, 610. *Caſ. L. and Eq.* 246.

3. The Plaintiff declared upon a Promiſſory Note made to a *Feme Covert*, and indorſed by her to him, and on Argument Judgment was given for the Defendant; the Right being in Point of Law veſted in the Huſband, and the Wife having no Power to diſpoſe of it. *Stran.* 516. *Connor* v. *Martin*.

SECT. IV.

Of demanding the Money from the Maker of a Promiſſory Note, and ſuing him and the Indorſer.

1. INdorſee of a Note muſt demand the Money from the Drawer or Maker. See P. 56. Parag. 17.

2. In an Action againſt the Indorſor of a Promiſſory Note, *Eyre* Chief Juſtice directed the Jury to find for the Defendant, becauſe the Plaintiff had not proved Diligence to get the Money of the Drawer; being of the old Opinion that the Indorſer only warrants upon the Default of the Drawer. *Stran.* 649. *Syderbottom* againſt *Smith.*

3. In an Action upon a Promiſſory Note by the Indorſee againſt the Indorſer, it was proved that the Defendant had payed Part of the Money. And Chief Juſtice *Lee* held that ſufficient to diſpenſe with the proving a Demand upon the Maker of the Note. *Stran.* 1246. *Hil.* 19 *Geo.* 2. *Vaughan* and *Fuller.*

4. The Defendant was ſued as Indorſer of a Note. And it was proved that a Diſcounter ſent the Note to the Defendant, who looked on it and ſaid it was his Hand, and the Note (which had ſome Months to run) would be paid when due. The Chief Juſtice refuſed to let the Defendant in to ſhew Forgery by the Similitude of Hands; ſince it would tend to deſtroy all Negotiation of Notes and Bills. But he ſeemed inclined to allow Proof of actual Forgery, if the Defendant could have ſhewn it, which he could not. And the Plaintiff obtained a Verdict. *Stran.* 1051. *Cooper* v. *Le Blanc.*

5. In an Action upon the Caſe upon a Promiſſory Note brought by the Perſon to whom it was payable, the Chief Juſtice let the Defendant in to ſhew that it was delivered in the Nature of an Eſcrow, *viz.* as a Reward in caſe he procured the Defendant to be reſtored to an Office, which it being proved he did not effect,

effect, there was a Verdict for the Defendant. *Stran.* 674. *Jefferies* v. *Auſtin.*

6. In an Action by the Indorſee of a Promiſſory Note againſt the Indorſer, it appeared the Plaintiff had after the Indorſement received Part of the Drawer of the Note: And it was held to be a taking upon himſelf to give the whole Credit to the Drawer of the Note, and abſolutely diſcharged the Indorſer: So the Plaintiff was non-ſuited. *Stran.* 745. *Kellock* v. *Robinſon.* See *L. Raym.* 744.

7. In *Aſſumpſit* upon a Promiſſory Note, there was Judgment by Default, and on executing a Writ of Inquiry, the Plaintiff did not produce the ſubſcribing Witneſs, but offered other Evidence of its being the Defendant's Hand. And the Court held this was ſufficient; for the Note being ſet out in the Declaration is admitted, and the only Uſe of producing it is to ſee whether any Money is indorſed to be paid upon it. *Stran.* 1149, *Bevis* v. *Lindſell.*

8. Upon a Caſe ſtated at *Niſi prius* in an Action by the Plaintiff as Indorſee of ſeveral Promiſſory Notes, it appeared that the Notes were given by the Defendant to one *John Church*, for Money by him knowingly advanced to the Defendant to game with at Dice, and that *Church* indorſed them to the Plaintiff for a full and valuable Conſideration; and that the Plaintiff was not privy to, or had any Notice that any Part of the Money, for which the Notes were given, had been lent for the Purpoſe of gaming.

Upon this a Queſtion aroſe upon the Statute 9 *Anne*, C. 4. Sect. 1. which ſays, "That all Notes "where the whole or any Part of the Conſideration is "Money knowingly lent for gaming, ſhall be void to "all Intents and Purpoſes whatſoever," Whether the Plaintiff could maintain this Action againſt the Defendant: And after two Arguments the Court were of Opinion he could not; for it is making it of ſome Uſe to the Lender, if he can pay his own Debts with it: And it will be a Means to evade the Act, it being ſo very difficult to prove Notice on an Indorſee.

And though it will be ſome Inconvenience to an innocent Man, yet that will not be a Balance to thoſe on the other Side. And the Plaintiff is not without Remedy; for he may ſue *Church* on his Indorſement: And it is but the common Hazard of taking Notes of Infants or *Feme Coverts*. As to what *Holt* ſaid in *Huſſey* and *Jacob* (See Page 61. Parag. 22.) *Salk.* 344. *Carth.* 356. 5 *Mod.* 175. it was not the Point adjudged; and the Chief Juſtice ſaid he had ſeen a Report wherein Notice was taken that all the learned Part of the Bar wondered at it. *Stran.* 1155. *Bowyer* v. *Brampton*.

9. *Aſſumpſit* upon a Promiſſory Note given by *Manning* to *Statham* and Order; *Statham* aſſigns it to *Witherhead*, and *Witherhead* to the Plaintiff: And upon a Demurrer to the Declaration an Exception was taken, becauſe the Aſſignment was made to *Witherhead*, without ſaying to him and Order, and then he cannot aſſign it over; for by this Means *Statham*, who had aſſigned it to *Witherhead* without ſubjecting himſelf to his Order, will be made liable to be ſued by a ſubſequent Indorſee. And to this the Chief Juſtice at firſt inclined; but afterwards it was reſolved by the whole Court that it was good; for if the Original was aſſignable (as it will be if it be payable to one and his Order) then, to whomſoever it is aſſigned, he has all the Intereſt in the Bill, and may aſſign it as he pleaſes; for the Aſſignment to *Witherhead* is an abſolute Aſſignment, which comprehends his Aſſigns; and therefore nothing is done when the Bill is aſſigned, but indorſing the Name of the Indorſer, upon which the Indorſee may write what he will, and at a Trial, when a Bill is given in Evidence, the Party may fill up the Blank as he pleaſes. *Comyns Caſ.* 160. *More* v. *Manning*.

10. Upon Motion for an Injunction the Caſe appeared to be, that the Plaintiff had been drawn in upon ſome falſe or miſtaken Conſideration, to give a Promiſſory Note to *J. S.*; and *J. S.* having put the Note in Suit, the Plaintiff brought his Bill in this

Court to be relieved, and to have an Injunction; and before Anſwer, or any Order made in the Cauſe, *J. S.* indorſed over the Note to the preſent Defendant *Dundaſs*; whereupon the Plaintiff amended his Bill, ſetting forth the Indorſement, and charging Notice both of the Fraud and *lis pendens* concerning it in *Dundaſs*, and prayed Relief againſt the Note, and an Injunction againſt *Dundaſs*, from proceeding at Law thereupon. *Dundaſs* in his Anſwer ſwore to the Payment of the Money ſpecified in the Note to *J. S.* upon the Note being indorſed over to him; but not clearing himſelf of the Charge upon him of Notice of the Fraud, an Injunction was granted by Mr. *Verney* Maſter of the *Rolls*, who declared that there was no Sort of Proceeding more liable to Fraud than the negociating ſuch Notes; and ſaid, that though generally the Conſideration of ſuch Note is not inquirable into in the Hands of an Indorſee (*Comyns* 43.) yet that where there appears to have been an original Fraud, and any Perſon knowing, or who may be ſuppoſed to have Notice of that Fraud, will pay his Money, and take an Indorſement to himſelf of ſuch Note, it is but Juſtice and Equity, that the Note ſhould ſtill be ſubjected to be avoided by that original Fraud, which it cannot but be ſuppoſed the Indorſee had Notice of, and that he would not have advanced the Money without having in View a Deſign to ſupport and maintain the Fraud. It was then prayed that the Injunction ſhould be granted only on Terms, that the Plaintiff ſhould give Judgment at Law with Releaſe of Errors, ſubject to the Order on hearing: But this was denied by his *Honour* ſaying, that he ſaw no Reaſon for it, and granted the Injunction generally, *Dict. Tr. and Com. Rolls Trin.* 14 *Geo.* 2. *Reynolds* and *Dundaſs*.

11. One *Slaughter*, a Clerk in the *Exchequer*, gave a Promiſſory Note to *Gekie*; *Gekie* indorſed it over to *Webb*, who indorſed it to the Defendant, who indorſed it to the Plaintiff. The Note was not payable till ſix Months after Date, and, about a Week after it be-

came due, the Plaintiff, by his Attorney, demanded the Money of *Slaughter*, who refuſed Payment, and deſired ſome Time of Forbearance, which the Plaintiff's Attorney refuſed to give; but, afterwards the Plaintiff himſelf gave him a Month's Time. This was in *Auguſt* laſt; and, the Month expiring before the Beginning of *Michaelmas* Term, the Plaintiff, the firſt Day of the Term, filed a Bill in the Exchequer againſt *Slaughter* (which was as ſoon as he could be ſued by reaſon of his Privilege) and on this Bill obtained Judgment; but, *Slaughter* proving inſolvent, the Plaintiff brought an Action againſt *Gray* the Indorſer. The Queſtion was, Whether, if the Indorſee gives Time to the Drawer of the Note, it does not diſcharge the Indorſers. The Chief Juſtice ſaid, the Time for the Indorſee to demand the Money of the Drawer was ſettled to be a reaſonable Time. A Verdict was given for the Plaintiff. *Dict. Tr. and Com.* 261. 8 *Geo.* 2. *Croſſe* and *Gray*.

12. An Action was brought by the Indorſee of a Promiſſory Note payable to *A.* or Order; and it was moved before the Trial on Behalf of the Defendant, that the Plaintiff might produce the Note, and leave it with his Attorney, in order to be inſpected by the Defendant, his Attorney, *&c.* on a Suggeſtion that the Note was forged: And it was inſiſted for the Defendant, That ſince even a Bond upon ſuch Motion might be produced, much more might a Note; but it was anſwered by the Counſel for the Plaintiff, and *per Cur.* though a Bond might be produced being under Hand and Seal, yet *that* was upon this Reaſon, that the Plaintiff declares upon it with a *Profert in Cur.* yet there is no Inſtance, that in this or ſuch a Caſe, a Plaintiff was ever obliged to produce his Evidence of what is the Foundation of his Action. And the Statute 3 and 4 *Anne* makes no Difference between theſe Notes and inland Bills of Exchange, but in the Point of pleading; and there is no Inſtance ſince that Statute (which muſt have often happened) that ever ſuch a Motion was made or granted; nor

before

before that Statute, that ever a Bill of Exchange was produced upon ſuch Motion. *Bunb. Rep.* 243. *Odams* v. the Duke of *Grafton*.

13. The third Indorſee of a Promiſſory Note kept it from the 1ſt of *November* to the 7th of *January*, without receiving it of the Maker of the Note: And in an Action againſt the firſt Indorſee without Notice, the Plaintiff was non-ſuited for his Neglect. *Stran.* 707. *Pepys* v. Sir *John Lambert*.

14. A Judgment was obtained at Law in an *Aſſumpſit*, upon an abſolute Promiſſory Note for 50 *l.* againſt the Plaintiff *Snowball*, who now brings his Bill to be relieved, ſuggeſting the Note was really agreed to be conditional, *viz.* "That unleſs *Ram*'s "Aſſurance roſe to 100 *l. per cent.* I (the now De-"fendant) give you my Word I will never trouble "you for the Money."

It was objected for the Defendant, firſt, That the Plaintiff ought not to be permitted to enter into this Evidence now, becauſe he might have done it at Law, either upon the general Iſſue, or by pleading ſpecially.

Secondly, That the Plaintiff ought not to give Parol Evidence to prove the *Intent* of a Note in Writing under Hand.

But *per Curiam* (*dubitante Eyre* Chief Baron) the Plaintiff was permitted to go into this Evidence, and was relieved; and Baron *Price* ſaid he could not diſtinguiſh this Caſe from that of Lady *Clarges* v. *Williams*, in this Court, *Feb.* 20, 1723. *Bunb. Rep.* 175. *Trin.* 1724. *Snowball* v. *Vicaris*.

SECT.

SECT. V.

Of the Action and Remedy on a Promiſſory Note, and the Manner of declaring and pleading thereon.

1. DEBT upon two Promiſſory Notes and a * *Mutuatus*. And on Demurrer to the Declaration, it was objected that an Action of Debt would not lie: That before the Statute no Action at all lay upon the Note (*Salk.* 129. See P. 105.) nor did an *Indebitatus Aſſumpſit* lie on a Bill of Exchange. And of this Opinion was the Court, and pronounced Judgment for the Defendant. But then it was obſerved by Serjeant *J. Comyns* for the Plaintiff, that there was one good Count upon the *Mutuatus*, and the Demurrer was to the Whole. Whereupon Judgment was given for the Plaintiff. *Stran.* 680. *Welſh* v. *Craig*.

2. *Parker* C. J. delivered the Reſolution of the Court. This is an *Indebitatus Aſſumpſit*, laid 16th *January* 1726. The Defendant has pleaded *Actio non accrevit infra ſex annos*. The Plaintiff has replied a Bill filed 23 *January*, 12 *Anne*, and that the Cauſe of Action aroſe within ſix Years before. The Defendant has demurred generally, and it has been inſiſted on by his Counſel, that the Replication is a Departure, there being ſeven Years Diſtance between the Day in the Declaration, and the filing the Bill as ſet forth in the Replication. But we are all of Opinion, notwithſtanding, that the Plaintiff muſt have Judgment. This being only a Parol Promiſe, the Time alledged in the Declaration is only Matter of Form, not of Subſtance; and not being a Departure in a material Point, is only a Defect in Form of Pleading, which not being ſhewn for Cauſe of Demurrer, purſuant to the Act for the Amendment of the Law, the Defen-

* *Mutuatus* in *Engliſh* ſignifies *borrowed*. If a Perſon owes another a certain Sum, for which he has a Promiſſory Note without Seal, Action of Debt lies upon a *Mutuatus*. *Law Dict.*

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dant cannot take Advantage of it. If a Verdict had found the Promiſe, or the filing the Bill, to be another Day, that would not have vitiated the Proceedings. 1 *Lev.* 110. 1 *Keb.* 566, 578. *Hob.* 164, 199.

If the Day had been Subſtance, it would have been a Departure; and ſo it was adjudged in this Court, *Paſ.* 1 *Geo. Stafford* v. *Torcer.* That was upon a Promiſſory Note dated in 1704. The Defendant pleaded *Actio non accrevit infra ſex annos:* The Plaintiff replied, a Bill filed 12 *Anne*; and after a Verdict the Judgment was arreſted, becauſe in that Caſe the Day was material. If the Day in this Caſe ſhould be looked upon as ſuch, it would be in the Defendant's Power in almoſt all Caſes to fix the Time and Place. As where the Plaintiff brings an Action of Aſſault and Battery in *London*, the Defendant pleads he made the Aſſault in *Middleſex*, and that afterwards the Plaintiff releaſed all Batteries except in *London*. By this he would make the Place material, and the Doctrine of bringing tranſitory Actions where the Plaintiff pleaſed, would fall to the Ground if the Defendant ſhould be allowed by artificial Pleading to make the Time and Place Matter of Subſtance. *Vide Co. Litt.* 282. b. *Yelv.* 114. *Strange* 21. *Cole* and *Hawkins.*

3. Caſe by Original in *B. R.* and declares againſt the Defendant as Indorſer of a Promiſſory Note, and after ſetting out the Note and Indorſement, he goes on, that *virtute inde* the Defendant became chargeable with the Payment of the Money *ſecundum tenorem* of the Indorſement. The Defendant upon *Oyer* of the Original pleads in Abatement, that the Charge againſt him ought to be according to the Tenor of the Note, and not of the Indorſement. And *Strange* for the Defendant inſiſted, that it might be, that the Indorſement appointed the Money to be paid at a different Time from what is mentioned in the Note; which are Terms that the Indorſer cannot lay upon the Party who made the Note. Suppoſe the Note be payable

payable 1ſt *May*, ſurely the Party to whom it is given cannot ſay, "I appoint the Contents of this Note "to be paid to *J. S.* upon 1ſt *April*;" or if he ſhould, yet the other will not be obliged to pay it till *May*. And if he is charged according to the Tenor of the Indorſement, his only Remedy muſt be to traverſe the being charged otherwiſe than according to the Tenor of the Note. And as to the Objection, that in Counts upon Promiſſory Notes, there is no Occaſion to lay any expreſs *Aſſumpſit*, and therefore the Whole may be rejected; he anſwered, that where the Pleader does not rely upon the firſt Part of the Caſe he makes, but goes on further, and alledges other Matter, he by that gives the other Side an Opportunity of traverſing the laſt Matter; as *Lutw.* 108.

Sed per Curiam. There is no Occaſion to pray in Aid of that Objection, here, where the Action is againſt the Indorſer. It is true, *he* cannot lay a Charge upon the Giver of the Note in a Manner different from the Terms of it; but he may charge himſelf, if he pleaſes: For every Indorſement is the ſame as making a new Note; and if the Note be payable 1ſt *May*, and the Indorſement appoints it to be 1ſt *April*, as to the Indorſer this is a Promiſſory Note payable 1ſt *April*. If this was an Action againſt the Giver of the Note, there might be more in the Objection. * *Reſpondeat ouſter agard. Strange* 478. *Smallwood* and *Vernon*.

4. In Caſe upon a Promiſſory Note, the Declaration ran, that the Defendant made a Note, *et manu ſua propria ſcripſit*. Exception was taken, that ſince the Statute, he ſhould have ſaid that the Defendant *ſigned* the Note: But the Court held it well enough; becauſe laid to be wrote *with his own Hand*, and there needs no Subſcription in that Caſe; for it is ſufficient

* *Reſpondeat ouſter*, ſignifies to anſwer over in an Action to the Merits of the Cauſe, &c. As where a Demurrer is joined upon a Plea, and it is adjudged againſt the Defendant, this is termed a *Reſpondeat ouſter*. *Jenk. Cent.* 306.

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his Name is in any Part of it. *I* A. B. *promiſe to pay*, is as good as *I promiſe to pay* ſubſcribed *A. B. Stran.* 399. *Taylor* v. *Dobbins.* See *L. Raym.* 1377.

5. The Plaintiff declares, that the Defendant *fecit quandam notam in ſcriptis per quam promiſit ſolvere.* And Exception was taken that here is no *Signing* by the Defendant, as the Statute requires: And the Caſe of *Taylor* and *Dobbins* (the next preceding) had the Words *manu ſua ſcripſit*, which was the Ground of the Judgment in that Caſe. But, in the principal Caſe, the Court held it well enough; for unleſs it was ſigned or wrote by him, it could not be ſuch a Note whereby the Defendant promiſed to pay. Judgment for the Plaintiff, *Stran.* 609. *Elliot* v. *Cowper. L. Raym.* 1376. *S. C.* and *Forteſcue* J. cited the late Caſe of *Taylor* v. *Dobbins*, as exactly this Caſe in Point, wherein, notwithſtanding this very Exception, the Plaintiff had Judgment, becauſe it was ſaid, *Fecit notam ſuam, per quam promiſit ſolvere*, which implied that it was ſigned by the Defendant; which Caſe *Pratt* Chief Juſtice remembered, and Judgment was given for the Plaintiff.

So where the Declaration was, that the Defendant made the Note for himſelf and Partner ſubſcribed it with his own Hand, whereby the Defendant promiſed for himſelf and Partner to pay, the Court held it very good; for this ſhews ſufficiently, that he ſigned it for himſelf and Partner; and Judgment for the Plaintiff. *L. Raym.* 1484. *Trin.* 13 *Geo.* 1. and 1 *Geo.* 2. *Smith* v. *Jarves.*

6. The Plaintiff brought two Actions upon a Promiſſory Note, one againſt the Drawer, and another againſt the Indorſer, and recovered it in both. And now *Wearg* moved, That they having tendered the Principal in one, and the Coſts in both, no Execution might be taken out; which the Court ordered accordingly, and ſaid they would have laid the Plaintiff by the Heels, if he had taken out Execution upon both. *Stran.* 515. *Windham* againſt *Wither*, and the ſame againſt *Trull.*

7. The

7. The Plaintiff declared upon a Promiſſory Note, by which the Defendant and one *A. B. conjunctim aut ſeparatim* promiſed to pay. There was a Verdict and Judgment in *C. B.* for the Plaintiff. But upon Error the Judgement was reverſed for want of the Plaintiff's ſhewing a Title to bring a ſeparate Action againſt one of the Makers of the Note; for by the preſent Declaration he only ſays he has this, *or* ſome other Cauſe of Action. Thus far *Strange.* And 2dly (ſays *L. Raym.* in his Report of the ſame Caſe) the Note does not import they promiſed ſeverally; for the Note ſet out is, that they promiſed jointly *or* ſeverally, which is not poſitive, they promiſed ſeverally; for it ought to have been, that they promiſed jointly *and* ſeverally. *Stran.* 819. *L. Raym.* 1544. *Ovington* againſt *Neale*, and the ſame againſt *Waller.*

8. Caſe upon a Promiſſory Note: And the Declaration ſet forth, that the Defendant and another did *conjunctim vel diviſim* promiſe to pay. *Demurrer inde.* And for the Defendant it was inſiſted, that the Action ſhould have been brought againſt both. *Et per Parker* C. J. the Plaintiff might have brought it againſt either or both; for he had his Election. If the Action had been againſt both, he ſhould have declared as he now does; but that is not right in the Action againſt one only. For he ſhould have declared generally, that this Defendant by his Note promiſed to pay, and a ſeveral Note by two would have been good Evidence. As where there are ſeveral Obligors, and one only is ſued, no mention is made in the Declaration of the other Obligors (1 *Sid.* 189, 238.) Suppoſe the Note had been to pay 50 *l.* or 100 *l.* the Plaintiff is intitled to either, but uncertain which, till he has made his Election; for he that ſpeaks in the Diſjunctive ſays true, if either Member of the Diſjunctive be verified; whereas he that ſpeaks in the Affirmative, affirms both Parts to be true.

The Plaintiff prayed Leave to diſcontinue on Payment of Coſts, which was granted; and at another Day moved that he might change his Rule, to one to amend

amend on Payment of Coſts, but this laſt Motion was denied. *Strange*, 76. 4 *Geo.* 1. *Butler* againſt *Maliſſy*.

9. In Caſe upon *Aſſumpſit* the Plaintiff declared that the Defendant, in Conſideration that the Plaintiff at the ſpecial Requeſt of the Defendant *deliberaſſet* to the Defendant *quandam notam*, by which one *Hurſt* aſſumed to pay to the Plaintiff one hundred Guineas, aſſumed to pay to the Plaintiff, *&c.* Upon *non Aſſumpſit* pleaded, Verdict for the Plaintiff. And now Mr. *Gilbert* moved in Arreſt of Judgment that the Conſideration of this Promiſe was not good, ſince it did not appear, that *Hurſt* gave this Note to the Plaintiff upon any good Conſideration, and conſequently the ſaid Note would be void, and then the Delivery of the ſaid Note by the Plaintiff to the Defendant would be no Prejudice to the Plaintiff nor Advantage to the Defendant. But it was reſolved *per totam Curiam*, that this was a good Conſideration; for though no Conſideration was expreſſed in *Hurſt*'s Note, yet the Note being ſubſcribed by *Hurſt* was good Evidence of a Debt due from *Hurſt* to the Plaintiff; and therefore the Delivery of the Evidence of his Debt to the Defendant at his Requeſt was a good Conſideration of the *Aſſumpſit* of the Defendant, upon which this Action was brought. And Judgment was given for the Plaintiff. Note, *Holt*, Chief Juſtice, ſaid, that he was of Opinion upon the Trial, that it was not neceſſary for the Plaintiff to prove, upon what Conſideration the Note of *Hurſt* was given, the Defendant having admitted it to have been given upon good Conſideration by his Promiſe. *L. Raym.* 759. *Meredith* v. *Shute. S. C.* 1 *Salk.* 25.

10. A *Scire facias* was brought in the Name of the Attorney General againſt Sir *John Elwell*, ſetting forth that there had an Extent iſſued againſt Sir *Matthew Kirwood*, and an Inquiſition was taken thereon, which found Sir *John Elwell* indebted to Sir *Matthew Kirwood* by two Promiſſory Notes, one for 150*l.* and the other for 100*l.* and prays that the Defendant

fendant ſhould ſhew Cauſe why the Crown ſhould not have Execution for this Debt.

The Defendant pleads that he was not indebted by theſe Notes, or either of them *die inquiſitionis*: The Attorney General proved (only) Sir *John*'s Hand to the Notes: The Defendant gave in Evidence that *Kirwood*, before he failed, brought an Action on theſe Notes, and obtained Judgment by *nil dicit*, and that a Writ of Inquiry of Damages iſſued, and was executed, and thereupon a final Judgment was had; and therefore that he could not be indebted on thoſe Notes, becauſe they were merged in the Judgment, according to *Higgin*'s Caſe 6 *Co.*

But it appeared, that although the interlocutory Judgment was entered before the Inquiſition was taken upon the Extent, yet the Writ of Inquiry and final Judgment were not executed and obtained until a long while afterwards; for the Inquiſition upon the Extent was upon the 28th *Nov.* 5 *Geo.* 1. The interlocutory Judgment was before, but the Writ of Inquiry was not executed until the 7th of *February*, 5 *Geo.* 1.

And thereupon the Lord Chief Baron *Gilbert*, who tried the Cauſe, immediately directed the Jury to find, as they did for the Crown.

Nota, Firſt, by this Plea it appears, that Debts are not bound till the *Teſte* of the Inquiſition: 2dly, That Notes of Hand are not merged by an Interlocutory Judgment, the Debt not being aſcertained before the Writ of Inquiry returned, and final Judgment entered thereon. *Bunb. Rep.* 199. *Trin.* 1725. Attorney General *v.* Sir *John Elwell.*

11. Forging any Promiſſory Note is Felony. See Page 90. Parag. 50.

SECT. VI.

Of Caſh or Goldſmiths Notes. The Indorſement and Action thereon; and the Time of demanding Payment of them.

1. IN an Action on the Caſe on an inland Bill of Exchange brought by the Indorſee againſt the Drawer, theſe following Points were reſolved.

1ſt, A Difference was taken between a Bill payable to *J. S.* or Bearer, and *J. S.* or Order; for a Bill payable to *J. S.* or Bearer, is not aſſignable by the Contract, ſo as to enable the Indorſee to bring an Action, if the Drawer refuſes to pay: becauſe there is no ſuch Authority given to the Party by the firſt Contract, and the Effect of it is only to diſcharge the Drawee, if he pays it to the Bearer, though he comes to it by Trover, Theft or otherwiſe. But when the Bill is payable to *J. S.* or Order, there an expreſs Promiſe is given to the Party to aſſign, and the Indorſee may maintain an Action. See P. 114.

2dly, Though an Aſſignment of a Bill payable to *J. S.* or Order, be no good Aſſignment to charge the Drawer with an Action on the Bill; yet it is a good Bill between the Indorſer and Indorſee, and the Indorſer is liable to an Action for the Money; for the Indorſement is in Nature of a New Bill.

3dly, It being objected that in this Caſe there was no Averment of the Defendant's being a Merchant. it was anſwered by the Court, that the Drawing the Bill was a ſufficient merchandizing and negotiating to this Purpoſe. 1 *Salk.* 125. *Hodges* v. *Steward.*

2. If a Bill payable to *A.* or Bearer be diſcounted, it is an abſolute Purchaſe; if to *A.* or Order, Indorſer muſt warrant it. 1 *Salk.* 127. *Lambert* and *Pack.* See P. 48.

3. The Plaintiff declares, *quod inter mercatores et alios negotiantes intra hoc regnum*, there is, and time, whereof, *&c.* hath been a Cuſtom that if any Trader make a Bill, or Note, by which he aſſumes to pay to another Perſon, or the Bearer of the Bill ſuch a Sum of Money, ſuch Perſon is bound by it to pay ſuch Sum to ſuch Perſon to whom the Note is payable or to the Bearer. The Plaintiff then ſhews that the Defendant *Sedgwick* being a Goldſmith, made a Note in Writing, whereby he promiſed to pay to *Maſon* or Bearer 100 *l.* that *Maſon* delivered the Note to the Plaintiff for 100 *l.* in Value received; and that for Non-Payment of this 100 *l.* the Plaintiff brought this Action againſt the Defendant. *Non Aſſumpſit* pleaded and Verdict for the Plaintiff. It was moved in Arreſt of Judgment, that this Action could not be brought in the Name of the Bearer, but it ought to be brought in the Name of him to whom it was payable. *Quod fuit conceſſum per Curiam*; for the Difference is, where the Note is payable to the Party or Bearer, or to the Party or Order: In the latter Caſe the Indorſee has been allowed to bring the Action in his own Name, becauſe the Indorſement of the Party muſt appear upon the Back of the Note; but where it is payable to the Party or Bearer, it may be very inconvenient; for then any one who finds the Note by accident may bring the Action. Though this laſt has been frequently attempted, it has never yet prevailed; and in the Caſe of *Horton* and *Coggs*, the Goldſmith (3 *Lev.* 299.) this Difference was taken and agreed; and the Judgment of the Court (being the ſame Caſe with this) was arreſted. But the Court declared that the Bearer might bring the Action in the Name of him to whom the Note was payable. And Judgment was arreſted, *niſi*, &c. The ſame Point was reſolved in *B. R.* between *Hodges* and *Steward*, *Salk.* 235. (the laſt Caſe but one.) But there it was reſolved that the Indorſement to the Bearer binds the Party who immediately indorſes it to him. The principal Point was alſo reſolved. *Mich.* 6 *W.* and

M. B. R.

M. B. R. between Sir *Thomas Eſcourt* and *Cudworth*. *Holt's Rep.* 181. *Nicholſon* v. *Sedgwick.*

4. The Defendant, at two of the Clock in the Afternoon, gave the Plaintiff Goldſmiths Notes in Payment, which were tendered the next Morning at nine; but the Goldſmiths had a Quarter of an Hour before ſtopped Payment. The Chief Juſtice directed the Jury, that the Loſs ſhould fall on the Defendant, there being no Laches in the Plaintiff, who had demanded their Money as ſoon as was uſual in the Courſe of Dealing, and that the keeping the Notes till the next Morning could not be conſtrued a giving new Credit to the Goldſmiths. And the Jury found accordingly. *Stran.* 415. 7 *Geo.* 1. *Moore* v. *Warren.*

5. The Defendant paid the Plaintiffs, who were the Sword-Blade Company, two Goldſmiths Notes at Three in the Afternoon; the Plaintiffs Servant the next Morning leaves the Notes with the Goldſmith in order to have the Money ready for him as he came a clearing; it being; as they proved, cuſtomary for the Bank and the Sword-Blade Company to ſend out their Notes in the Morning, and call for their Money as their Servant returned in the Evening; and the Goldſmith upon receiving the Notes always cancelled them, and got the Money told out againſt the Time it was uſually called for. The Notes in this Caſe were brought early in the Morning and received and cancelled: And between four and five in the Afternoon the Servant that left them called again for the Money, when the Goldſmiths had juſt ſtopt Payment: Upon which the Servant takes new Notes of the ſame Tenor and Date with the cancelled ones he left in the Morning. And becauſe the Plaintiffs had done nothing but what was uſual, in leaving Notes inſtead of taking the Money when he firſt called in the Morning, the Chief Juſtice directed the Jury to find for the Plaintiffs, which they did. *Strange*, 416. 7 *Geo.* 1. *Turner* v. *Mead.*

6. The Plaintiff, who kept Caſh with the Bank, on *Saturday* left a Note for 50*l.* on *Cox* and *Cleeve*: On

Monday they gave it to the Runner, who left it at the Shop in the Morning, where they cancelled the Note; but when he called in the Afternoon for the Money, according to his uſual Practice, he found the Banker had ſtopt Payment; whereupon he took a new Note of the ſame Tenor and Date. And *King*, Chief Juſtice, directed the Jury, that it would be dangerous to ſuffer Perſons to deal with Notes in this Manner, and ſaid the Common Pleas was of that Opinion in the like Caſe. But however he directed they ſhould only find the Value of the Note when cancelled, upon which the Jury found 25 *l* the Goldſmiths having paid 10*s.* in the Pound. *Strange*, 550. 9 *Geo.* 1. *Hayward* and the Bank of *England*.

7. Upon the 17th of *September* (being *Saturday*) about two o'Clock in the Afternoon, *Harriſon* gave to *Manwaring* in Payment a Note for 100 *l.* by *Mitford* and *Mertins*, Goldſmiths, dated 5th *September*, payable to *Harriſon* or Order. The ſame Afternoon *Manwaring* pays away the Note to *J. S. Mitford* and *Mertins* paid all *Saturday* and *Monday*, and on *Tueſday* Morning as ſoon as the Shop was opened, and before any Money paid, *J. S.* came and demanded the Money, but *Mitford* and *Mertins* ſtopt Payment: *Manwaring* paid back the Money to *J. S.* and demanded it again of *Harriſon*; who refuſing to pay it, an Action was brought. And on *non Aſſumpſit* the Chief Juſtice told the Jury, that giving the Note is not immediately Payment, unleſs the Receiver does ſomething to make it ſo by neglecting to receive it in a reaſonable Time, by which he gives Credit to the Maker of the Note. He left it to them whether there had been any Neglect, and obſerved that the Note was payable to *Harriſon*, who had kept it eleven Days, and probably would not have demanded it ſooner than *Manwaring* did, it appearing the Goldſmiths were in full Credit all the while. The Jury deſired they might find it ſpecially, and leave to the Court whether there was reaſonable Time; but the Chief Juſtice told them they were Judges of that:

Where-

Whereupon they found for the Defendant, and declared it as their Opinion, that a Perſon who did not demand a Goldſmiths Note in two Days took the Credit on himſelf. *Strange*, 508. *Manwaring and Harriſon.*

8. *Woodward*'s Note was paid to the Plaintiff at Twelve on the *Friday*, who put it into the Bank at One, and the next Morning at Ten the Runner of the Bank carried it to the Shop with other Notes to the Value of 2600*l.* and left them (as uſual) to call again for the Money: He called at Eleven and they ſaid, their Servant was gone to the Bank. He called again at Two, and they ſaid they were going to ſhut up, and refuſed to pay; but paid ſmall Notes for two Hours and then ſtopt. And the next Morning Notice was given to the Defendant, who had paid the Note to the Plaintiff. And now in an Action for the Money the Queſtion was whether this was Payment to the Plaintiff. It was inſiſted for the Defendant, that ſhe ſhould not ſuffer by the Plaintiff's Payment into the Bank, who ſent it with other Notes; whereas if the Note had been tendered by itſelf, it would have been paid. On the contrary, it was inſiſted, that if there had been no Demand, there would have been no Laches, being within a Day after the Receipt, that the Goldſmiths ſtopt Payment. The Chief Juſtice ſaid there was no ſtanding Rule, but left it to the Jury, who found for the Plaintiff to the Value of the Note. *Strange*, 910. 5 *Geo.* 2. *Hoar* and *Da Coſta.*

9. At half an Hour after Eleven in the Morning of 18th *January*, the Defendant being indebted to the Plaintiffs, paid to their Caſhier a Note of *Caſwell* and *Mount*, Goldſmiths in *Lombart-Street*; they continued to pay all Notes till the next Day at Two; and immediately after they had ſtopt Payment, the Company's Servant came with the Note. The Queſtion was, who ſhould bear the Loſs? And upon examining Merchants, it was held that the Company had made it their own, by not ſending it out the Afternoon of the 18th, or at furtheſt the next Morning.

So there was a Verdict for the Defendant. *Strange*, 1175. *East India* Company v. *Chitty*.

10. A Banker's Note for 500 *l.* was paid to the Plaintiff after Dinner, who ſent it the next Morning at Nine, when the Banker had ſtopt Payment: And it was ruled that there was no Laches in the Plaintiff, ſo as to fix the Loſs on him; and that in all theſe Caſes there muſt be a reaſonable Time allowed, conſiſtent with the Nature of circulating Paper Credit. *Strange*, 1248. *Fletcher* v. *Sandys*.

11. The Notes of Goldſmiths (whether they be payable to Order or to Bearer) are always accounted among Merchants as ready Caſh, and not as Bills of Exchange. The Time of receiving Money upon a Goldſmith's Note is immediately, or elſe it will be at the Peril of him who pays the Note. He who delivers over the Note, will not be charged if the Goldſmith fails, as the Drawer of a Bill of Exchange would be; but the Receiver is ſuppoſed to give Credit to the Goldſmith, and the Note is looked upon as ready Money payable immediately; and if he does not like it he ought to refuſe it: but having accepted it, it is at his Peril. But note, if the Party to whom the Note is delivered demands the Money of the Goldſmith in a reaſonable Time, and he will not pay it, it will charge him who gave the Note. A Goldſmith's Note indorſed is a Bill of Exchange againſt the Indorſer. *L. Raym.* 743. *Taſſel* and *Lee* v. *Lewis*.

12. An Action upon the Caſe upon an *Indebitatus aſſumpſit* was brought, wherein the Plaintiff counts on three Promiſes, *viz.* for 60 *l.* received by the Defendant to the Plaintiff's Uſe, for 60 *l.* lent by the Plaintiff to the Defendant, and on an *Inſimul computaſſet* for 60 *l.* On *non Aſſumpſit* pleaded, the Cauſe was tried at the *Niſi Prius* at *London*, before the Lord Chief Juſtice *Holt*. And on the Evidence, the Fact appeared to be, one *Fellows* a Merchant, who kept his Caſh with the Defendant, Sir *Stephen Evans*, a Goldſmith in *Lombard-Street*, was indebted to the Plaintiff

Plaintiff in 60*l.* 10*s.* the Plaintiff ſent his Servant to receive the Money of *Fellows*, who directed his Servant to pay *Ward*'s Man the Money at Sir *Stephen Evans*'s; accordingly the Servant went to Sir *Stephen Evans*'s Shop, and there *Fellows*'s Servant directed the Defendant's Servant to pay *Ward*'s Servant the 60*l.* 10*s.* and to indorſe it on a Note of 100*l.* from the Defendant to *Fellows*, in Part of Payment of the 100*l.* The Defendant's Servant accordingly indorſes 60*l.* 10*s.* as paid on the ſaid Note of 100*l.* and then paid 10*s.* to *Ward*'s Servant, and gave him a Note, ſubſcribed by one *Wallis* a Goldſmith for 60*l.* payable to one *Freeman* or Bearer, which the Plaintiff's Servant accepted. This Tranſaction was about Noon, and at that Time *Wallis* was a ſolvent Perſon, and continued paying his Bills till Night. Next Morning the Plaintiff's Servant coming with the Note to receive the 60*l.* of *Wallis*, found that *Wallis* had ſtopt Payment, and was become inſolvent. Whereupon the Plaintiff brings this Action againſt the Defendant for the 60*l.* Note, it did not appear upon the Evidence, that the Plaintiff was conuſant of, or privy to, this Tranſaction of his Servant, or had given him any Authority to receive ſuch a Note inſtead of Money, or approved of it afterwards. This Matter, at the Requeſt of the Defendant's Counſel, was drawn up by way of Caſe, and was put into the Paper to be argued.

Three Points were made in this Caſe. Firſt, whether this Evidence was ſufficient to maintain the Declaration on any of the three Courts. Secondly, whether the Acceptance of the Note upon *Wallis* by the Plaintiff's Servant, without his Direction or Approbation ſhall bind the Plaintiff. Thirdly, whether the Delivery of ſuch a Note be in Law a good and actual Payment of the 60*l.*

Mr. Serjeant *Hall* was of Counſel for the Defendant, and gave his Opinion for his Client, but did not think it neceſſary to labour the Points.

Mr. Serjeant *Darnall* for the Plaintiff argued, that the Servants of Merchants might in ſome Caſes bind

their Maſters by their Acts, but then it muſt be in the Buſineſs of a Merchant; but a Servant cannot accept a Bill of Exchange drawn upon his Maſter, to bind his Maſter, unleſs there be plain and ſtrong Evidence, that the Maſter gave him Authority ſo to do. And he cited *Lex Mercatoria*, 265, and a Treatiſe concerning Bills of Exchange by * *John Marius*, 47. *A fortiori* the Servant in this Caſe cannot bind the Plaintiff without his Conſent, where there is not the ſame Neceſſity, nor the ſame Advantage to the Publick by encouraging of Trade. 2. This is no actual Payment, for the Law adjudges nothing actual Payment but Money, or other thing given or taken in Satisfaction by Conſent of both Parties. 5 *Co.* 117. *Pynnel*'s Caſe. This Note is but as a bare Piece of Paper, not valuable in itſelf, nor valuable to the Plaintiff; for he cannot bring any Action to compel the Payment of it, but in the Name of *Freeman* (*Salk.* 125. See Parag. 3. of this Section) who may refuſe to give him leave to uſe his Name. He agreed, that if *A.* ſells Goods to *B.* for 50*l.* and at the ſame Time *B.* gives *A.* ſuch a Note for 50*l.* and *A.* accepts it; this is an actual Payment although the Note be never received; becauſe it ſhall be taken as Part of the Contract, that *A.* was to accept ſuch Note in Satisfaction for his Goods. But where there is a preceding Debt or Duty, as in this Caſe, ſuch Note will not amount to Payment till it be paid, unleſs there be any Negligence and Delay in the Party who takes the Note, in going to receive it. For if the Goldſmith continue ſolvent for a long Time after the Note delivered, and the Party keep the Note by him without demanding the Money, and afterwards the Goldſmith become inſolvent, he that took the Note ſhall ſtand to the Loſs of it; becauſe by keeping the Note, he prevented the other from receiving it. But in this Caſe the Fact is otherwiſe, for the Plaintiff's Servant went the next Morning to receive the Money.

* Note, *Holt*, Chief Juſtice, ſaid *Marius*'s Book was a very good Book.

Holt,

Holt, Chief Juſtice. When a Servant is ſent to receive Money on a Bill, he cannot accept a Note inſtead of Money, without the particular Direction of his Maſter. Suppoſe the Servant in this Caſe had brought *Wallis*'s Note home to the Plaintiff, and the Plaintiff had ſent him back with it, refuſing to accept it, and inſiſting to have Money, then it would not have been a Payment beyond all Doubt. But indeed if the Maſter does give his Conſent to the taking of the Note, that will amount to an Authority precedent. But then I am of Opinion, and always was, (notwithſtanding the Noiſe and Cry, that it is the Uſe of *Lombard-ſtreet*, as if the contrary Opinion would blow up *Lombard-Street)* that the Acceptance of ſuch a Note is not actual Payment. I agree the Difference taken by my Brother *Darnall*, that taking a Note for Goods ſold is Payment, becauſe it was Part of the original Contract; but Paper is no Payment where there is a precedent Debt. For when ſuch a Note is given in Payment, it is always intended to be taken under this Condition, to be Payment if the Money be paid thereon in convenient Time. This Note was demanded within convenient Time; but if the Party who takes the Note, keeps it by him for ſeveral Days without demanding it, and the Perſon who ought to pay it becomes inſolvent, he that received it muſt bear the Loſs: becauſe he prevented the other Perſon from receiving the Money, by detaining the Note in his Cuſtody. As for the Nature of the Action, I am of Opinion, that an *Indebitatus aſſumpſit* for Monies received to the Plaintiff's Uſe lies properly in this Caſe, and that this Evidence is ſufficient to maintain the Plaintiff's Declaration; for when the 60*l.* was indorſed on *Fellows*'s Bill, as ſo much actually paid by Sir *Stephen Evans* to *Fellows*, *Fellows* directing that Sum to be paid to the Plaintiff, and the Defendant having the Money in his Hands, it amounts to a Receipt of ſo much by the Defendant to the Plaintiff's Uſe. No doubt the Action were maintainable if the Plaintiff had brought the Note back

back again to the Defendant; and though he did not, ſince it does not amount to actual Payment, the Plaintiff muſt recover.

Powell, Juſtice. This Evidence will maintain the Declaration; for *Fellows*'s Caſh remaining in the Defendant's Hands, when by the Indorſement the Defendant is diſcharged from ſo much of *Fellows*'s Note as againſt him, that Money being to be paid by his Direction to the Plaintiff, it is a Receipt by the Defendant to the Plaintiff's Uſe. The Delivery and Acceptance of *Wallis*'s Note is no Payment; for when a Maſter ſends his Servant to receive Money, he cannot accept a Note in lieu of it. Perhaps if the Maſter had been there himſelf, he would have refuſed the Note, as knowing the inſufficiency of *Wallis*; and ſhall the Servant oblige them to take ſuch a Note by his Acceptance, without his Maſter's Directions? Indeed if the Maſter conſents to it afterwards, that amounts to a previous Command. And the taking of ſuch a Note is no Payment; for it is always a conditional Acceptance, and ſo underſtood, not to be a Diſcharge till paid; and if it ſhould be otherwiſe, it would be to let in Fraud, and give Goldſmiths and others an Opportunity of cheating Traders. But ſtill the Money ought to be demanded in convenient Time; for if the Party keep the Note by him without demanding it, he muſt run the Hazard of it, but here it was demanded in due Time. Let the Plaintiff take Judgment *per totam curiam*. *L. Raym.* 928. 13 *W.* 3. *B. R. Ward* and *Evans*.

13. The Caſe was this, a Maſter ſends his Servant, that was uſed to tranſact Affairs of that Nature for him, on *Saturday* Morning, with a Note drawn upon Sir *Stephen Evans*, with Orders to get from Sir *Stephen* either Bank Bills or Money, and turn them into Exchequer Notes; but the Servant having other Buſineſs of his Maſter's upon his Hands, to ſave himſelf the Time and Trouble of going to Sir *Stephen*, goes to *B.* and prevails with him to give him a Bank Bill for Sir *Stephen*'s Note; and then, in Pur-

Purſuance of his Maſter's Orders, inveſted it in Exchequer Notes, which he brought to his Maſter, not letting him know but that he had gone to Sir *Stephen*.

Sir *Stephen Evans* failing upon the *Monday* following, upon whom this Loſs ſhould light, *B.* or the Maſter, was the Queſtion.

Chief Juſtice *Parker*, who tried the Cauſe, was firſt of Opinion, that it ſhould fall upon *B.* becauſe the Servant acted directly contrary to his Maſter's Orders, and *B.* by furniſhing the Servant with a Bank Bill, did the Maſter no Service at all; for if he had done it, the Servant muſt in Obedience to his Maſter's Orders, have gone and received *himſelf* the Money from Sir *Stephen*; and cited the Caſe of *Ward* and *Evans* (the preceding Caſe) where it was reſolved, that if a Servant ſent to receive Money, takes a Bill in lieu of it, the Maſter is not bound by the Act of the Servant unleſs the Bill is anſwered.

But one of the Jury informing him, that he took the Practice to be otherwiſe (for that whether a Servant, uſed to act upon the Credit of his Maſter, went againſt the Orders of the Maſter, was a Fact that could not be known to a third Perſon) he quitted his Opinion, but directed the Counſel to move the Court of *B. R.* which was accordingly done.

The Subſtance of what was ſaid, upon the Motion, in favour of the Maſter, was, that the Servant going contrary to his Orders, and there being no ſubſequent Conſent of the Maſter, who knew nothing of the Matter, the Act of the Servant ſhould not bind the Maſter, according to the Caſes of *Ward* and *Evans*. *Mich.* 2 *Ann. Hankey* and *Watts*. *Thorold* and *Smith*, 3 *Cro.* 471. Maſter commands his Servant to ſell his Horſe, Servant ſells him as a good one; no Action againſt the Maſter.

But the Court were all of Opinion, that the Verdict was well given, and that the Maſter was chargeable, and he only. For a Servant by tranſacting Affairs for his Maſter does thereby derive a general Authority

thority and Credit from him; and if this general Authority ſhould be liable to be determined for a Time, by any particular Inſtructions or Orders, to which none but the Maſter and Servant are privy, there would be an end of all dealing but with the Maſter.

The Maſter has put himſelf in the Power of the Servant by truſting him with the Bill. * *Monk* and *Clayton*, was a Caſe where the Act of a Servant, tho' out of Place, bound his Maſter, by reaſon of the former Credit given him by his Maſter's Service; and the other not knowing that he was diſcharged. And as for the Caſes put, there was this main Difference between them, that nothing came to the Maſter's Uſe; as here the Note did. In ſome of thoſe Caſes there was a *prior* Debt; but none here.

It was agreed by the Court that the Property of the Notes was not transferred and veſted in *B.* but was only in Nature of a *Depoſitum* or Security to him, for there is no Indorſement; nor could he have ſued upon the Bill; and though Practice cannot alter the Law, yet it may explain an Agreement.

They were likewiſe of Opinion, that the Maſter could not recover it of the Servant; the Loſs being occaſioned by a mere Accident, and not either Folly or Negligence.

If a Maſter frequently ſend a Servant to Market without ready Money, ſo that the Servant is truſted

* A Servant of Sir *Robert Clayton*, and Mr. Alderman *Morris* (but at that Time actually gone from them) took up two hundred Guineas of Mr. *Monk* a Gold-ſmith, without any Authority of his Maſters; (but *Monk* did not know that he was gone) the Money not being paid, *Monk* brought an Action againſt Sir *Robert Clayton* and *Morris*, and at *Guildhall* it was ruled *per Keiling*, Chief Juſtice, that they ſhould anſwer; and there was a Verdict for the Plaintiff. And though there were great Endeavours to obtain a new Trial, yet it was denied, the Court at *Weſtminſter* being fully ſatisfied that they ought to anſwer; for this Servant had uſed often to receive and pay Money for them: and thereupon he actually paid the Money. *Molloy*, B. 2. Chap. 10 §. 27. *Monk* v. *Clayton* and *Morris*. *Mich.* 22 *Car.* 2. in *B. R.*

upon

upon the Maſter's Account; if in ſuch a Caſe, the Servant embezzles Money when he is ſent with it, and buys upon Truſt, the Maſter is chargeable: *contra*, if always ſent with ready Money. 3 *Keble*, 625. *Luc.* 109. *Nickſon* and *Brohan.*

14. A Bank Bill payable to *A* or Bearer, being given to *A.* and loſt, was found by a Stranger, who transferred it to *C.* for a valuable Conſideration; *C.* got a new Bill in his own Name. And by *Holt* Chief Juſtice, *A.* may have * *Trover* againſt the Stranger who found the Bill; for he had no Title, though the Payment to him would have indemnified the Bank; but *A.* cannot maintain *Trover* againſt *B.* by reaſon of the Courſe of Trade which creates a Property in the Aſſignee or Bearer. 1 *Salk.* 126. *Anon.*

25. In *Indebitatus aſſumpſit* brought by the Plaintiffs againſt the Defendant for 454*l.* 18*s.* 3*d.* lent to the Defendant by the Plaintiffs, and another Count for 454*l.* 18. 3*d.* laid out at the Requeſt of the Defendant for the Uſe of the Defendant; and on *non aſſumpſit* pleaded, upon the Evidence at the Trial before *Holt* Chief Juſtice, at the Sittings at *Guildhall*, *Paſch.* 1. *Ann.* The Caſe was thus: The Defendant, *January* 31, 1700, brought a Note of Mr. *Shepherd* the Goldſmith, payable to *Robert Stamper* for 454*l.* 18*s.* 3*d.* to the Bank of *England*, and prayed Mr. *Maddocks*, the Caſhier of the Bank, to give him a *Specie* Bank Note payable to the ſaid *Stamper* for the ſaid Note of *Shepherd*; which Mr. *Maddocks* refuſed, but told the Defendant, that if he would promiſe to pay the Bank the 454*l.* 18*s.* 3*d.* in caſe *Shepherd* did not pay the ſaid Note, he would give him a *Specie* Bank Note payable to himſelf for the ſaid Sum; to which the Defendant agreed. Whereupon Mr. *Maddocks* accepted *Shepherd*'s Note, and gave the Defendant

* *Trover* in an Action that lies againſt one, who having found another Perſon's Goods, refuſes to deliver them upon Demand; or it lies where a man has in his Poſſeſſion Another's Goods by Delivery to him, or otherwiſe, and the Perſon ſo poſſeſſed, ſells or makes Uſe of them without the Owner's Conſent. *Law Dict.*

dant *Glover* a *Specie* Bank Bill of 454*l.* 18*s.* 3*d.* This was done upon the *Friday*. The *Monday*, this Note of *Shepherd* was ſent to him to be paid, and *Shepherd* refuſed to pay it. In the mean time *Glover* gave this Bank Note to *J. S.* for a Debt owing to him to *J. S.* and *J. S.* received the 454*l.* 18*s.* 3*d.* of the Bank. And after Debate by the Counſel of both Sides, *Holt*, Chief Juſtice, was of Opinion that this Evidence did not maintain the Action. For (by him) this was not Money lent, nor laid out for the Uſe of the Defendant; but it was a buying of the Note of *Shepherd* with a Warranty of it from the Defendant; and therefore the Plaintiff might well maintain a ſpecial Action, but not a general *Indebitatus aſſumpſit.* It was urged by the Plaintiff's Counſel that this Note was only a *Depoſitum* or Pledge. But to that the Chief Juſtice anſwered, that that could not be, becauſe it was not redeemable by the Defendant, and Redemption is incident to the Nature of a Pledge. The Plaintiffs were non-ſuited. *L. Raym.* 153. 1 *Ann.* Bank of *England* v. *Glover.*

16. One *Agris* a Goldſmith having 150*l.* of *Berkeley*'s Money in his Hands, gives him a Note whereby he promiſes to pay him or Order, on Demand, the Sum of 150*l.* *Berkley* being indebted in the ſame Sum to the Plaintiff, delivers over that Note to the Plaintiff, but without making any Indorſement; Plaintiff preſently carries this Note, and likewiſe another Bill for 80*l.* which he had upon one *Jackſon*, to Sir *Stephen Evans* and *Hales*, Goldſmiths in *Lombard-ſtreet*, who were his Bankers or Caſhiers, and they gave him a Note to this Effect, *viz. Received of Mr.* Trowell (the Plaintiff) 230*l. upon Account*; and on the Margin it was written thus: *Berkley* 150, *Jackſon* 80*l.* And this Note was ſigned by Sir *Stephen Evans* and *Hales.* They preſently ſent their Dunner to *Agris* to demand the Money; but he put them off from Time to Time for about thirteen or fourteen Days, though the Dunner had been ſeveral Times with him for the Money; and afterwards *Agris* fails;

it was proved in the Cauſe that *Agris* was ſolvent after the Note given by Sir *Stephen Evans*, and had paid above 800*l.* to ſeveral People; upon *Agris*'s failing the Plaintiff applies to the Defendants, Sir *Stephen Evans* and *Hales*, for the Payment of the 150*l.* Sir *Stephen* not thinking himſelf obliged to pay it, ſends the Plaintiff to *Berkeley*, to whom the Note was firſt given, and he likewiſe refuſing Payment, the Plaintiff brought his Bill againſt them for a Satisfaction, and had a Decree at the Rolls to charge Sir *Stephen Evans* and *Hales*; from which Decree they appealed to my Lord Keeper, and inſiſted they were not chargeable with this Money; that they took *Agris*'s Note only as Servants to the Plaintiff, and had ſeveral Times ſent their Dunner to demand the Money; that his promiſing them Payment was the Reaſon they did not give Notice nor return the Note to the Plaintiff; that their Manner of giving Notes in *Lombard-ſtreet* was different from thoſe given by Goldſmiths at *Temple-bar*, yet in Subſtance they were the ſame, and amounted to no more than a Receipt for the two Notes from ſuch Perſons for ſo much Money, which, when they receive, they promiſe to be accountable for; that this Bill was but in Nature of an Action of Account againſt them as Bailiffs or Receivers of ſo much Money; and at Common Law, if ſuch Action had been brought, and upon the Trial it appeared they had received no Money, the Jury would have found againſt the Plaintiff; that the Reaſon that led Sir *Stephen* to give a Note in ſuch Form was a Caſe, *Mich.* 2 *Ann.* between *Ward* and him, (P. 134.) where the Caſe was that the Plaintiff *Ward* being indebted to one *Fellows* in the Sum of 60*l.* and having a Note from Sir *Stephen Evans* for 100*l.* when *Fellows* came for his Money, *Ward* ſends a Servant with him to Sir *Stephen* with a Bill of 100*l.* and ordered him to pay *Fellows* the 60*l.* and indorſe it off the 100*l.* Note; but Sir *Stephen* having a Note on one *Wallis* for 60*l.* 10*s.* gives that Note to *Fellows* who pays him the 10*l.* Overplus, and goes away with the Note; the next

Day

Day *Wallis* fails, and upon an Action brought by *Ward* for the 100*l.* the Court of *B. R.* was of Opinion, that the Delivery of the Note upon *Wallis* for 60*l.* 10*s.* was no Payment, and therefore *Ward* recovered the whole 100*l.* and therefore Sir *Stephen* now only gave the Note for ſo much received on Account: and the Note in the Margin, ſhewing from whom it was due, made it plain, he only acknowledged the Receipt of ſuch Notes but had no Deſign to charge himſelf with the Money till it was received. But my Lord Keeper was clearly of Opinion, that the Note imported an Acknowledgment of ſo much Money received on the Plaintiff's Account; that the Entry on the Margin could at moſt only ſhew how it was received; and that the Note ſpoke for itſelf, whatever the Forms and Meaning of ſuch Notes were, and therefore affirmed the Decree. *Mich.* 1710. *Trowel* and Sir *Stephen Evans et al.* 1 *P. Williams.*

17. *Bellamy* gave a Bill of Exchange *payable to* N. *or Bearer*; *N.* went and negotiated it with the Bank at the uſual Rate of Intereſt. After this the Bank received 100*l.* of *Bellamy*, and after that demanded the Money due on the Bill of a Servant of *Bellamy*, who did not pay it; and afterwards *Bellamy* failed, and the Bank brought an *aſſumpſit* againſt *N.* for the Money, and on the general Iſſue, a Verdict for the Plaintiff, and a new Trial granted, the Verdict being againſt Law; for whatſoever may be the Practice among the Bankers, the Law is, that if a Bill or Note be payable to one or Bearer, and he negotiates the Bill and delivers it, for ready Money to him, without any Indorſement on the Bill, this is a plain buying of the Bill; as of Tallies, Bank Bills, *&c.* but if it be indorſed there is a Remedy againſt the Indorſer. But *Holt* laid the Rule thus: If a Man gives ſuch a Bill for Money *not due* before without Indorſement, it is a Sale of the Bill. 12 *Mod.* 241. *Mich.* 10 *W.* 3. The Governor and Company of the Bank of *England* againſt *Newman.* *Comyn's Rep* 57.

Paſch.

Paſch. 11 *W.* 3. *S. C.* and a new Trial granted; becauſe the Bank having diſcounted the Bill with Allowance, it was a Purchaſe in them of the Bill; beſides the Bill was not received at the Day when the Bill was good, and *B.* ſolvent; which Delay was a Laches in the Bank ——— *L. Ray.* 442. *Trin.* 11 *W.* 3. *S. C.* and *S. P.* held accordingly by *Holt*, Chief Juſtice, who ſaid, if a Man has a Bill payable to him or Bearer, and he delivers it over for Money received without Indorſement of it; this is a plain Sale of the Bill, and he who ſells it does not become a New Security: but if he had indorſed it, he had become a new Security, and then he had been liable upon the Indorſement. But upon a new trial, the Jury found for the Plaintiff.

18. An Executor gave a Legatee a Bill on a Goldſmith, but the Legatee did not demand the Sum of the Goldſmith, and the Goldſmith breaks. It was held by the Lord Keeper, that the Loſs ſhall be to the Legatee; but if he had demanded it in convenient Time, and the Goldſmith had not paid it but had broke, it would be no Payment, but the Legatee might reſort back to the Executor for his Legacy. And it was ſaid in this Caſe that four or five Days ſhould be a convenient Time for this Purpoſe. 2 *Freem. Rep.* 247. pl. 314. *Hill.* 1700. *Phillips* v. *Phillips. S. C.* cited 2 *Freem. Rep.* 257. pl. 234. *Trin.* 1702. in the Caſe of *Crawley* v. *Crowcher.* In which Caſe it was held and admitted, that if a Man receives a Goldſmith's Bill in Payment for Money, and he that receives the Bill does not demand it in three or four Days Time at the moſt, and afterwards the Goldſmith breaks, that this Neglect ſhall occaſion the Loſs to fall upon the Receiver; but if the Goldſmith breaks in Three Days Time, the Loſs ſhall fall upon him who gave the Bill for Payment; for although taking a Goldſmith's Bill is Payment *prima facie*, yet it is ſubject to that Contingency, that the Bill may be had if it be demanded in Three Days Time; and this

the Lord Keeper ſaid was the Practice at *Guildhall*, when he practiſed there: but in this Caſe the Plaintiff was offered his Choice at the Goldſmith's Shop, to have either his Money or a Bill, and he choſe a Bill, and the next Day the Goldſmith broke, and therefore the Loſs fell not upon the Party who paid the Money, but upon the Plaintiff; for it was his own Fault that he would not take his Money. See P. 131, 132, 133 and 134.

CHAP.

CHAP. III.

Of POLICIES *of* ASSURANCE.

SECT. I.

Assurance or Insurance defined. The Antiquity, Nature, and various Kinds of it.

1. ASSURANCE or Insurance signifies a Security given, in Consideration of a Sum of Money paid, in Hand, of so much *per cent.* to an Assurer or Insurer, to indemnify the Insured from such Losses as shall be specified in the Policy or Instrument of Assurance, subscribed by the Insurer, or Insurers, for that Purpose. *Dict. Tr. and Com.* 135. *Savary's Dict. Tit.* Assurance, *and* Police d'Assurance.

2. It is conceived by * *Suetonius*, that *Claudius Cæsar* was the first who brought in this Custom of Assurance; by which the Danger and adventure of Voyages is divided, repaired and borne by many Persons, who, for a certain Sum, by the *Spaniards* called *Premio*, assure Ships, or Goods, or both, or a Proportion, according as the Policy is. *Molloy*, B. 2. C. 7. §. 1. *Malynes's Lex Mercatoria, Ed.* 1686. p. 104.

3. Mr. *Savary*, in his *Dictionaire de Commerce, Tit.* Assurance, thinks this Custom was first introduced by the † *Jews*, in the Year 1182: But whoever was the

* In vita *Claudii Cæsaris*, Lib 25. Cap. 18. Ut quæ in naves imposuissent ab hostium tempestatisque vi publico periculo essent, negotiatoribus certa lucra proposuit, suscepto in se damno, si cui quid per tempestates accidisset. Liv. Lib. 23. C. 25.

† L'origine des Assurances vient des Juifs. Ils en furent les Inventeurs, lorsqu'ils furent chassez de France en l'année 1182, sous le regne de Philippe Auguste. Ils s'en servirent alors pour faciliter le transport de leurs effects. Ils en renouvellerent l'usage en 1321, sous Philippe le Long, qu'ils furent encore chassez du Royaume.

firſt Contriver, or original Inventor of this uſeful Branch of Buſineſs, it has for many Ages been practiſed in this Kingdom, and is ſuppoſed to have been introduced here by ſome *Italians* from *Lombardy*, who at the ſame Time came to ſettle at *Antwerp*, and among us: And this being prior to the building of the Royal Exchange, they uſed to meet in a Place where *Lombard-Street* now is, at a Houſe they had, called the *Pawn-houſe* or *Lombard*, for tranſacting Buſineſs; and as they were then the ſole Negotiators in Inſurance, the Policies made by others in After-times had a Clauſe inſerted, *that thoſe latter ones ſhould have as much Force and Effect, as thoſe formerly made in* Lombard-Street. *Lex Mercatoria rediviva*, 261.

4. Aſſurances are of various Sorts, ſome being to Places certain, others general. Thoſe that are made to Places certain, are commonly upon Goods laden or to be laden aboard outward, and until the ſame Adventure ſhall be landed at ſuch a Port; or upon Goods laden or to be laden homeward in ſuch a Ship till the Adventure ſhall likewiſe be landed; or elſe upon Goods out and in, with Liberty to touch at all Ports that are mentioned in the Policy.

So likewiſe on Ships that go trading Voyages, as round to *Cadiz*; and that it ſhall be lawful, after the Ship's Delivery there, to take in at the ſame Port another Cargo, and with that proceed to the *Weſt-Indies* or other Ports, and back again to *Cadiz*, and from thence to *London*; this Policy being general and dangerous, ſeldom procures Subſcriptions, or at leaſt very chargeable ones.

As Goods and Merchandize are commonly inſured, ſo likewiſe are the Ship's Tackle and Furniture; but in regard there ſeldom happens a Voyage but ſomewhat is miſſing or loſt, the *Premium* commonly runs higher than for Merchandize.

Aſſurances may be made on Goods ſent by Land, ſo likewiſe on Hoys and the like, and may be made on the Heads of Men; as if a Man is going for the *Streights*, and

and perhaps is in ſome Fear that he may be taken by the *Moors* or *Turkiſh* Pirates, and ſo made a Slave, for the Redemption of whom a Ranſom muſt be paid, he may advance a *Premium* accordingly upon a Policy of Aſſurance; and if there be a Caption, the Aſſurer muſt anſwer the Ranſom that is ſecured to be paid on the Policy. *Molloy*, B. 2. C. 7. §. 4. cites *Mich.* 29 *Car.* 2. in *B. R. Liſle* v. *Sedgwick.*

5. The Policies now-a-days are ſo large, that almoſt all thoſe curious Queſtions that former Ages, and the Civilians according to the Law Marine, nay and the common Lawyers too, have controverted, are now out of Debate. Scarce any Misfortune that can happen, or Proviſion to be made, but the ſame is provided for in the Policies that are now uſed: for they inſure againſt Heaven and Earth, Streſs of Weather, Storms, Enemies, Pirates, Rovers, *&c.* or whatſoever Detriment ſhall happen † or come to the Thing inſured, *&c. Molloy*, B. 2. C. 7. §. 7.

SECT. II.

Of the Royal Exchange Aſſurance and London Aſſurance Companies for Shipping and Merchandize.

1. IN the Year 1720, the two Companies of Aſſurance, that of the *Royal Exchange Aſſurance* headed by the Lord *Onſlow*, and that of the *London Aſſurance* by the Lord *Chetwynd*, firſt had their Eſtabliſhment.

Thoſe who projected them had been very induſtrious to beſpeak the Countenance of the Houſe of Commons, for which they had cauſed two Letters to be printed, and given to the Members. But theſe and all other Sollicitations having proved ineffectual,

† Sub nomine periculi, de quo fit cautio, comprehenditur omnis caſus qui accidit in mari, a tempeſtate, ab hoſtibus, prædonibus, repriſaliis, ut vocant, arreſtis, aliiſque modis uſitatis et inuſitatis citra fraudem et culpam contrahentium, aut domini mercium vel navis. *Grot. de Jure Holl.* part 24.

the Managers for the two Companies had recourſe to other Expedients; and, underſtanding that the Civil Liſt was conſiderably in Arrears (for which no Proviſion had been, or could conveniently be made by the Parliament, becauſe the Grand Committee of Supply had been inadvertently diſmiſſed) they offered to the Miniſtry 600,000*l.* towards the Diſcharge of that Debt, in caſe they might obtain the King's Charter, with the parliamentary Sanction for the Eſtabliſhment of their reſpective Companies.

The Miniſtry being at a Loſs for Means to pay the Civil Liſt Debt, readily embraced the Offer; and Mr. *Craggs* having the Day before prepared the leading Members of the Houſe of Commons, Mr. *Aiſlabie* preſented, *May* the 4th, to the Houſe the following Meſſage:

" His Majeſty having received ſeveral Petitions " from great Numbers of the moſt eminent Mer- " chants of the City of *London*, humbly praying, that " he would be graciouſly pleaſed to grant them Let- " ters Patent for erecting Corporations to aſſure Ships " and Merchandize, and the ſaid Merchants having " offered to advance and pay a conſiderable Sum of " Money for his Majeſty's Uſe, in caſe they may ob- " tain Letters Patents accordingly: His Majeſty be- " ing of Opinion, that erecting two ſuch Corpora- " tions, excluſive only of all other Corporations and " Societies for aſſuring of Ships and Merchandizes, " under proper Reſtrictions and Regulations, may be " of great Advantage and Security to the Trade and " Commerce of the Kingdom, is willing and deſi- " rous to be ſtrengthened by the Advice and Aſſiſ- " tance of this Houſe in Matters of this Nature and " Importance. He therefore hopes for their ready " Concurrence, to ſecure and confirm the Privileges " his Majeſty ſhall grant to ſuch Corporations, and to " enable him to diſcharge the Debts of his civil Go- " vernment, without burdening his People with any " new Aid or Supply."

Purſuant

Purſuant to the Meſſage, a Bill was brought in to enable his Majeſty to grant Letters of Incorporation to the two Companies: So that by 6 *Geo.* 1. C. 18. his Majeſty was impowered to grant two Charters for Aſſurance of Ships and Merchandize, *&c.* and to incorporate the Adventurers in Conſideration of the before mentioned Sum of Money by them to be advanced. The Statute runs:

Sect. 1. It ſhall be lawful for his Majeſty, by two Charters, to grant ſuch Perſons who ſhall be named therein, and admitted as Members into the ſaid Corporations, ſhall be each a ſeparate Body, Politic and Corporate, for the Aſſurance of Ships and Merchandizes, at Sea or going to Sea, or for lending Money upon Bottomry. And the ſaid Corporations ſhall have Power to chuſe their Governors, Directors, and other Officers; and the Governors and Directors ſhall continue in their Office for three Years, and, in Caſe of Death or Removal, be ſupplied as ſhall be preſcribed in the Charters; and each of the ſaid Corporations ſhall be capable by Law to purchaſe Lands not exceeding 1000 *l. per annum.*

Sect. 4. Each of the two Corporations ſhall be obliged to cauſe ſuch Stock of ready Money to be provided, as ſhall be ſufficient to anſwer all juſt Demands for Loſſes, and ſhall ſatisfy all ſuch Demands; and, in Caſe of Refuſal or Neglect, the Parties aſſured may bring Action of Debt, *&c.* in any of his Majeſty's Courts of Record at *Weſtminſter*, in which the Plaintiffs may declare, that the ſame Corporation is indebted to them in the Monies demanded, and have not paid the ſame according to this Act.

Sect. 6. The Corporations, in general Courts, may raiſe ſuch capital Stocks, either by taking Subſcriptions of particular Perſons, or by Calls of Money from their Members, or by ſuch other Ways as to ſuch General Courts ſhall ſeem expedient; and all Subſcribers ſhall have a Share in the capital Stock, and ſhall be admitted Members; but no Perſon ſhall

be intitled to any greater Share in the Stock, than the Money which they have paid.

Sect. 7. The Corporations ſhall have Power, in their General Court, to call in from their Members any farther Sums as ſhall be adjudged neceſſary; and, in Caſe any Member ſhall refuſe to pay his Share at the Times appointed, by Notice in the *Gazette*, and upon the *Royal Exchange*, the Corporation may not only ſtop the Dividend payable to ſuch Member, but alſo ſtop the Transfers of the Shares of ſuch Defaulter, and charge him with Intereſt at 8 *per cent. per ann.* and if the Principal and Intereſt ſhall be unpaid three Months, the Corporations, or their Courts of Directors, may authorize Perſons to ſell ſo much of the Stock of ſuch Defaulter, as will ſatisfy the ſame; and the Money ſo called in ſhall be deemed capital Stock. Nevertheleſs, the Corporations in a general Court may cauſe any Sums called in to be divided amongſt the then Members, and the Shares in the Capitals ſhall be proportionably abated.

Sect. 8. For enabling the Corporation to lend Money on Parliamentary Securities, they ſhall have Power to borrow Money upon Bonds under their common Seal, at ſuch Intereſt, for any Time not leſs than ſix Months, as they ſhall think fit, ſo as the Principal ſhall not exceed the principal Monies then owing to them on ſuch parliamentary Securities, and ſuch Bonds ſhall not be chargeable with Stamp-Duties.

Sect. 9. The Shares in the capital Stock ſhall be transferable and deviſable; and their Bonds ſhall be aſſignable and recoverable, as his Majeſty by the Charter ſhall preſcribe; and the capital Stock ſhall be adjudged a perſonal, and not a real, Eſtate, and ſhall go to the Executors, and not to the Heir.

Sect. 10. The Stock ſhall be exempted from Taxes, and no Governor, Director, or other Officer of the Corporations, ſhall for that Cauſe be diſabled from being a Member of Parliament, nor in reſpect of ſuch a Share be liable to be a Bankrupt; and no Stock in the

the Corporations ſhall be ſubject to foreign Attachment by the Cuſtom of *London*, or otherwiſe.

Sect. 11. His Majeſty, by the ſaid Charters, may grant to each of the Corporations Power to make By-Laws, and ſuch farther Powers relating to Aſſurance of Ships *&c.* or lending Money upon Bottomry, as to him ſhall ſeem meet.

Sect. 12. All other Corporations, and all Partnerſhips for aſſuring Ships or Merchandizes at Sea or for lending Money upon Bottomry, ſhall be reſtrained from underwriting any Policies, or making any Contracts for Aſſurance of Ships or Merchandizes at Sea, or going to Sea, and from lending Money by way of Bottomry; and if any Corporation, or Perſons acting in ſuch Partnerſhip (other than one of the two Corporations to be eſtabliſhed) ſhall underwrite any ſuch Policy, or make ſuch Contract for Aſſurance of Ships, *&c.* or agree to take any Premium for ſuch Policies, every ſuch Policy ſhall be void, and every Sum ſo underwritten ſhall be forfeited, and may be recovered; one Moiety to the Uſe of the Crown, the other to the Perſon who ſhall ſue for the ſame in any Court of Record at *Weſtminſter*. And if any Corporation or Perſons acting in ſuch Partnerſhip, agree to lend Money by way of Bottomry contrary to this Act, the Security ſhall be void, and ſuch Agreement ſhall be adjudged an uſurious Contract: Nevertheleſs, *any particular Perſon ſhall be at Liberty to underwrite Policies, or may lend Money by way of Bottomry, ſo as the ſame be not on the Account or Riſque of a Corporation, or of Perſons acting in Partnerſhip.*

Sect. 13. If any Perſon ſhall forge the common Seal of either of the Corporations, or counterfeit or alter any Policy or Obligation under the common Seal, or ſhall offer to diſpoſe of, or pay away, any ſuch counterfeited or altered Policy, *&c.* knowing the ſame to be ſuch, or ſhall demand the Money therein contained of either of the Corporations, knowing ſuch Policy, *&c.* to be counterfeited, *&c:* with intent to defraud the Corporation, or any other Perſon, ſuch Offender being convicted;

victed, ſhall be guilty of Felony without Benefit of Clergy.

Sect. 14. No Perſon ſhall be capable of being elected Governor, Sub-Governor, deputy Governor, or Director of either of the ſaid Corporations during the Time he ſhall be Governor, *&c.* of the other Corporation; and if any Governor, *&c.* or Member of either of the ſaid Corporations, having any Share in the capital Stock of that Corporation, ſhall in his own Name, or in the Name of any other, purchaſe any Share in the Stock of the other Corporation, the Share ſo purchaſed ſhall be forfeited; one Moiety to the Uſe of his Majeſty, the other to the Proſecutor, to be recovered as before mentioned.

Sect. 15. Upon three Years Notice to be printed in the *Gazette*, and affixed upon the *Royal Exchange*, by Authority of Parliament, at any Time within 31 Years, to be reckoned from the Dates of the two Charters, and upon Payment by Parliament to the Corporations of the Sums of 300,000 *l.* which the Corporations were to pay to his Majeſty without Intereſt, the Corporations ſhall ceaſe; and any Vote of the Houſe of Commons, ſignified by the Speaker in Writing, to be inſerted in the *Gazette*, and affixed on the *Royal Exchange*, ſhall be deemed ſufficient Notice.

Sect. 16. If, after the Expiration of 31 Years, his Majeſty ſhall judge the farther Continuance of the ſaid Corporations to be hurtful to the Publick, it ſhall be lawful, by Letters Patents under the Great Seal to make void the ſame Corporations; and the ſame ſhall become void accordingly, without any Inquiſition, *ſcire facias*, &c.

Sect. 17. In Caſe the Corporations ſhall be redeemed within 31 Years, or revoked by Letters Patents after 31 Years, the ſame Corporations, or any Corporation with like Powers, *&c.* ſhall not be grantable again.

Sect. 26. It ſhall be lawful for the *South Sea* Company, and for the *Eaſt India* Company, to lend on

the Bottom of any Ship, and on the Goods on Board any Ship in the Service of the ſaid Companies reſpectively, to any Captains, or other Perſons employed in the Service of the Companies, any Money by way of Bottomry, this Act notwithſtanding.

Sect. 29. If any Governor, or Member of either of the Corporations, ſhall on account of the ſaid Corporations, lend to his Majeſty Money by way of Loan, or Anticipation of any Part of the Revenues, other than ſuch Funds on which a Credit of Loan ſhall be granted by Parliament, the ſaid Governor, *&c.* or other Members conſenting to ſuch Loan, being convicted thereof, ſhall forfeit treble the Value of the Sums ſo lent; one fifth Part to the Informer, to be recovered in any Court of Record in *Weſtminſter*, by Action of Debt, *&c.* and the Reſidue to be diſpoſed of to publick Uſes, as ſhall be directed by Parliament.

2. Stat. 7 *Geo.* 1. Cap. 27. Sect. 26. The Corporation called the *London Aſſurance*, having paid into the Exchequer 111,250*l.* in Part of 300,000*l.* and having covenanted to pay 38,750*l.* the farther Part thereof in three Months, and the Corporation, called the *Royal Exchange Aſſurance*, having done the like, the Reſidue of the ſaid Sums, amounting together to 300,000*l.* ſhall be releaſed.

3. By Stat. 8 *Geo.* 1. Cap. 15. Sect. 25. Where the *Royal Exchange Aſſurance* and the *London Aſſurance* are ſubjected to pay double Damages beſides Coſts, the Plaintiff ſhall recover againſt them only ſingle Damages and Coſts.

4. By Stat. 11 *Geo.* 1. Cap. 30. Sect. 43. on all Actions of Debt againſt either of the Corporations, called the *Royal Exchange Aſſurance* and the *London Aſſurance*, upon any Policies under the common Seal, for the aſſuring of any Ships or Merchandize at Sea, or going to Sea, it ſhall be lawful for the ſaid Corporations to plead generally, that they owe nothing to the Plaintiff; and in all Actions of Covenant againſt either of the ſaid Corporations upon any Policy under

der the common Seal, for the aſſuring any Ship or Merchandizes at Sea, or going to Sea, it ſhall be lawful for each of the Corporations to plead generally, that they have not broke the Covenant in ſuch Policy contained; and, if thereupon Iſſue be joined, it ſhall be lawful for the Jury to give ſuch Part only of the Sum demanded, if it be an Action of Debt, or ſo much in Damage, if it be an Action of Covenant, as it ſhall appear upon the Evidence, that the Plaintiff ought in Juſtice to have.

Sect. 44. When any Veſſel or Merchandizes ſhall be inſured a Policy duly ſtamped ſhall be iſſued or made out, within three Days at fartheſt; and the Inſurer neglecting to make out ſuch Policy, ſhall forfeit 100*l.* to be recovered and divided as other Penalties may be, by the Laws relating to the Stamp-Duties; and all Promiſſory Notes for Aſſurance of Ships or Merchandizes at Sea, or going to Sea, are declared void.

SECT. III.

Stat. 19 Geo. 2. c. 37. *Concerning Wager-Policies.*

1. AN Act to regulate the Inſurance on Ships belonging to *Great Britain*, and on Merchandizes or Effects laden thereon.

The Preamble to which obſerves, that the making Aſſurances *Intereſt or no Intereſt*, or without further Proof of Intereſt than the Policy, hath been productive of many pernicious Practices, whereby great Numbers of Ships, with their Cargoes, have either been fraudulently loſt and deſtroyed, or taken by the Enemy in time of War; and ſuch Aſſurances have encouraged the Exportation of Wool, and the carrying on many other prohibited and clandeſtine Trades, which, by Means of ſuch Aſſurance, have been concealed, and the Parties concerned ſecured from Loſs, as well to the Diminution of the publick Revenue, as

to the great Detriment of fair Traders; and, by introducing a miſchievous kind of Gaming or Wagering under the Pretence of aſſuring the Riſque on Shipping and fair Trade, the Inſtitution and laudable Deſign of making Aſſurances hath been perverted: and that which was intended for the Encouragement of Trade and Navigation has, in many Inſtances become hurtful of, and deſtructive to, the ſame: For Remedy whereof *it is enacted*, That, from and after the firſt Day of *Auguſt* 1746, no Aſſurance or Aſſurances ſhall be made, by any Perſon or Perſons, Bodies Corporate or Politick, or any Ship or Ships belonging to his Majeſty or any of his Subjects, or on any Goods, Merchandizes or Effects, laden or to be laden, on Board of any ſuch Ship or Ships, Intereſt or no Intereſt, or without further Proof of Intereſt than the Policy, or by way of Gaming or Wagering, or without Benefit of Salvage to the Aſſurer, and that every ſuch Aſſurance ſhall be null and void to all Intents and Purpoſes.

Aſſurances on private Ships of War, fitted out by any of his Majeſty's Subjects, ſolely to cruize againſt his Majeſty's Enemies, may be made by, or for the Owners thereof, Intereſt or no Intereſt, free of Average, and without Benefit of Salvage to the Aſſurer. Merchandizes or Effects from any Ports or Places in *Europe* or *America*, in the Poſſeſſion of the Crown of *Spain* or *Portugal*, may be aſſured in ſuch Way and Manner, as if this Act had not been made.

It ſhall not be lawful to make Re-aſſurance, unleſs the Aſſurer ſhall be inſolvent, become a Bankrupt or die, in either of which Caſes ſuch Aſſurer, his Executors, Adminiſtrators or Aſſigns may make Re-aſſurance to the Amount of the Sum before aſſured, provided it ſhall be expreſſed in the Policy to be a Re-aſſurance.

After the ſaid firſt Day of *Auguſt*, all and every Sum and Sums of Money to be lent on Bottomry, or at *Reſpondentia*, upon any Ship or Ships belonging to any of his Majeſty's Subjects, bound to or from the

Eaſt

Eaſt Indies, ſhall be lent only on the Ship, or on the Merchandize or Effects laden, or to be laden, on board of ſuch Ship, and ſhall be ſo expreſſed in the Condition of the Bond; and the Benefit of Salvage ſhall be allowed to the Lender, his Agents or Aſſigns, who alone ſhall have a Right to make Aſſurance on the Money ſo lent; and no Borrower of Money on Bottomry, or at *Reſpondentia*, as aforeſaid, ſhall recover more on any Aſſurance than the Value of his Intereſt on his Ship, or in the Merchandizes or Effects laden on board of ſuch Ship, excluſive of the Money ſo borrowed; and in caſe it ſhall appear that the Value of his Share in the Ship, or in the Merchandizes and Effects laden on Board, doth not amount to the full Sum or Sums he hath borrowed, as aforeſaid, ſuch Borrower ſhall be reſponſible to the Lender for ſo much of the Money borrowed, as he hath not laid out on the Ship or Merchandizes laden thereon, with lawful Intereſt for the ſame, together with Aſſurance, and all other Charges thereon, to the Proportion the Money laid out ſhall bear to the whole Money lent, notwithſtanding the Ship and Merchandize be totally loſt.

In all Actions or Suits brought or commenced after the ſaid firſt of *Auguſt* by the Aſſured, upon any Policy of Aſſurance, the Plaintiff in ſuch Action or Suit, or his Attorney, *&c.* ſhall, within fifteen Days after he or they ſhall be required ſo to do in Writing by the Defendant or his Attorney, *&c.* declare in Writing the Sum he hath aſſured in the whole, and what Sums he hath borrowed at *Reſpondentia*, or Bottomry, for the Voyage or any Part of the Voyage in Queſtion, in ſuch Suit or Action.

After the ſaid firſt of *Auguſt* any Perſon, *&c.* ſued in any Action of Debt or Covenant, *&c.* on any Policy of Aſſurance, may bring into Court any Sums of Money; and if the Plaintiff ſhall refuſe ſuch Sum of Money, with Coſts to be taxed, in full Diſcharge of ſuch Action, and ſhall afterwards proceed to Trial, and the Jury ſhall not aſſeſs Damage to ſuch Plaintiff,

tiff, exceeding the Sum ſo brought into Court, ſuch Plaintiff ſhall pay to ſuch Defendant Coſts to be taxed.

This Act ſhall not extend to, or be in Force againſt any Perſons reſiding in any Parts in *Europe* out of his Majeſty's Dominions, for whoſe Account Aſſurance ſhall be made before the 29th of *September* 1746; nor againſt Perſons reſiding in any Parts of *Turkey Aſia*, *Africa*, or *America*, from whom Aſſurances ſhall be made before the 29th of *March* 1747.

SECT. IV.

What ſhall be deemed Baratry and Deviation; and of charging or diſcharging the Inſurer thereon.

1. BAratry is when the Maſter of a Ship, or the Mariners, cheat the Owners or Inſurers, whether by running away with the Ship, ſinking her, deſerting her, or embezzling the Cargo*. *Dict. Tr. and Com.* 214.

2. Baratry of the Mariners is a Diſeaſe ſo epidemical on Ship-board, that it is very rare for a Maſter, be his Induſtry never ſo great, to prevent it, a Span of Villany on Ship-board ſoon ſpreads out to a Cloud, for no other Cauſe but that of the circular Encouragement that one knaviſh Mariner gives another.

However, the Law does in ſuch Caſes impute Offences and Faults committed by them to the *Negligences* in the Maſter; and were it otherwiſe, the Merchant would be in a very dangerous Condition.

The Reaſons why they ought to be reſponſible are, for that the Mariners are of his own chuſing,

* BARATTERIE DE PATRON, en term de commerce de mer, Veut dire, les larcins, les deguiſemens, et alterations des marchandiſes, que peuvent cauſer le maître, et l'equipage d'un vaiſſeau; et generalement toutes les ſupercheries et malverſations, quils mettent aſſez ſouvent en uſage, pour tromper le marchand chargeur, et autres qui ont interêt au Vaiſſeau. *Savary.*

and

and under his Correction and Government, and know no other Superior on Ship-board but himſelf; and if they are faulty, he may correct and puniſh them, and juſtify the ſame by Law: and likewiſe if the Fact is apparently proved againſt them, may reimburſe himſelf out of their Wages. *Molloy*, B. 1. C. 3. §. 13. cites. *Roll. Ab.* 533. *Paſch.* 11 *Jac.* in *B. R. Horn* v. *Smith.*

3. And therefore, in all Caſes whereſoever the Merchant loads aboard any Goods or Merchandize, if they be loſt, embezzled, or any other ways damnified, he muſt be reſponſible for them; for the very lading them aboard makes him liable, and that as well by the *Common Law* as the *Law Marine*. *Molloy*, B. 1. C. 3. §. 14. cites 1 *Ven.* 190, 238. 1 *Mod.* 85. 2 *Lev.* 69.

4. Nay, if his Mariners go with the Ship-boat to the Quay or Wharf to fetch Goods on Ship-board, if once they have taken Charge of them, the Maſter becomes immediately reponſible, if they ſteal, loſe, damnify, or embezzle them. *Molloy*, B. 1. C. 3. §. 15.

5. The moſt ancient Record that is found extant concerning this Matter, is that in *Edward* the Third's Time, where one brought an Action of Treſpaſs againſt the Maſter for an Embezzlement by his *Mariners* of twenty two Pieces of Gold, a Bow, a Sheaf of Arrows, a Sword and other Things; and adjudged he ſhould anſwer. And as this Record may be of ſome Importance as well as Curioſity, here follows a Tranſcript thereof, as the ſame was certified into Chancery, in order to have it ſent into the *King's Bench*, to enable the Plaintiff to bring an Action upon the ſame Judgment in any Place in *England* where he could meet with the Defendant.

* Venerabili in Chriſto Parti Domino *J.* De gratia † *Wygorn'* Epiſcopo, Domini Regis *Ed.* Cancellario,

* Brevia Regis in Turre London. *Trin. Ann.* 24. *Ed.* 3. n. 45 *Briſtol.*

† *Worceſter*,

vel

vel ejus locum tenenti, ſui humiles & devoti *Robertus Gyene*, Major Ville *Briſtol*, *Edwardus Blankeit*, & *Johannes de Caſtle Acre*. Ballivi liberatum ejuſdem Ville, Salutem cum omni reverentia & honore. De tenore, & recordi, & proceſſus loquele que fuit coram nobis in cur' Domini Regis ibidem ſine brevi, inter *Hen. Pilk* & *Jurdanum Venore* magiſtrum navis vocat *La Graciane de Bayone* in pl'ito tranſgreſs' prout per breve Domini Regis nobis directum fuit, vobis inde certificatur, ſub ſigillis noſtris vobis, ſi placet, mittimus, in hiis ſcriptis. Ad placit. *Tells* tent' ibidem die Martis prox' poſt feſtum *Epiphaniæ* Domini, anno regni Regis nunc 24. *Hen. Pilk* quer' opt' ſe verſus *Jurdanum Venore* magiſtrum navis vocat' *La Graciane de Bayone* de pl' ito tranſgreſs' per' pl' &c. Et unde quer' quod ſecundum legem & conſuetudinem de OLERON unuſquiſque Magiſter navis tenetur reſpondere de quacunque tranſgreſs' per ſervientes ſuos in eadem fact'; & *Johannes* de *Rule* & *Barcolet de Bornes* ſervientes predicti *Jurdani* magiſtri navis predicti die Mercur prox' ante Feſtum Omnium Sanctorum, an. regni predicti Regis *Ed.* 23. in mari juxta *Britan.* in eadem navi de *Johanne de Cornub.* ſervient' predict' 22 libr' in auro, arcus, ſagit' glad & al' bona & catalla ad valenc' 40*l.* ceperunt & aſportaverunt injuſte, &c. ad dampnum predict' *Hen.* 60*l.* & ſi predictus *Jurdanus* hoc velit dedicere, predict' *Hen.* paratus eſt verificare, &c. Et predictus *Jurdanus* venit & dicit, quod lex de OLERON talis eſt, quod ſi aliqua bona & Catalla magiſtro alicujus navis liberata ſunt cuſtodiend', unde idem magiſter pro eiſdem vel pro aliqua alia re in eadem navi facta manucap', illo modo magiſter navis tenetur reſpondere, non alio modo, & ſup' hoc petit judicium. Et predict. *Hen.* dicit, quod unuſquiſque magiſter tenetur reſpondere de quacunque tranſgreſſione per ſervientes ſuos in navi ſua fact', & petit judicium ſimiliter. Et ſup' hoc predict' partes habent diem hic die Sabbati prox' poſt Feſtum ſcil. *Hillarii* prox' futur' ad audiend' judicium ſuum, &c. Ad quem diem predicte partes venerunt & petierunt

judicium ſuum, &c. Et recitat, recordo & proceſſu prædictis in plena curia coram Majore & Ballivis & aliis probis hominibus Ville, & magiſtris & marinariis, viſum fuit curie, quod unuſquiſque magiſter navis tenetur reſpondere de quacunque tranſgreſſione per ſervientes ſuos in navi ſua facta. Ideo conſideratum eſt, quod predict' *Hen.* recuperet dampna ſua 40*l.* verſus predict. *Jurdanum* per cur. taxat', & nihilominus idem *Jurdanus* tranſgreſſione prædicta in miſericordia*. *Molloy.* B. 1. C. 3. §. 16.

6. Where a ſhip was inſured againſt the Baratry of the Maſter, *&c.* in an Action brought thereupon, the Jury found that the Ship was loſt by the Fraud and Negligence of the Maſter: the Court held, that if the Maſter run away with the Ship, or embezzle the Goods, the Merchant may have an Action againſt him; for it is reaſonable that Merchants who hazard their Stocks in foreign Traffic, ſhould ſecure themſelves in what Manner they think proper, againſt Baratry of the Maſter and all other Frauds; and this muſt be intended Fraud in the Maſter, not a bare Neglect: And they all agreed that Fraud is Baratry, though not named in the Covenant; but Negligence might not. 2 *Mod.* C. 230, 231.

7. *Cambridge* brought a Writ of Error upon a Judgment given againſt him in the *Common Pleas*, in an Action brought by the Plaintiff upon a Policy of Inſurance of the Ship *Riga Merchant*, at and from *Port Mahone* to *London*. And Serjeant *Braithwaite* for the Plaintiff in Error inſiſted, that the Judgment was erroneous, becauſe the Breach was ill aſſigned: Becauſe the Policy was, that the Defendant *Cambridge* ſhould inſure the ſaid Ship, among other Things againſt the Baratry of the Maſter, and all other Dangers, Damages, and Misfortunes, which ſhould happen to the Prejudice and Damage of the ſaid Ship;

* The Judgment in this Caſe is according to Law, and ought not to have been *a Capiatur*; for it is not ſuch a Treſpaſs as the King is intitled to a Fine. *Vide Cro. Jac.* 224. *Beedle* v. *Morris*. *Coke's Entries*, Fo. 347.

and the Breach aſſigned was, that the Ship, in the ſaid Voyage, *per fraudem & negligentiam magiſtri navis prædictæ depreſſa & ſubmerſa fuit, & totaliter perdita & amiſſa fuit, & nullius valoris devenit.* This, he inſiſted, was not within the Meaning of the Word *Baratry*; but the Breach ſhould have been expreſs, that the Ship was loſt by the Baratry of the Maſter. Beſides, the Owner of the Goods has a Remedy againſt the Owners of the Ship, for any Prejudice he receives by the Fraud or Neglect of the Maſter; and, therefore, there is the leſs Reaſon the Inſurer ſhould be liable. Beſides, if the Word *Baratry* ſhould import Fraud, yet it does not import Neglect; and the Fact here alledged is, that the Ship was loſt by the Fraud and Neglect of the Maſter. But the Court was unanimouſly of Opinion, that there was no Occaſion to aver the Fact in the very Words of the Policy; but if the Fact alledged came within the Meaning of the Words in the Policy, it is ſufficient. Now Baratry imports Fraud (*Du Freſne Gloſſar. verbo Barataria, fraus, dolus*) and he that commits a Fraud may properly be ſaid to be guilty of a Neglect, *viz.* of his Duty. Baratry of a Maſter is not to be confined to the Maſter's running away with the Ship; and the general Words of the Policy ought to be conſtrued to extend to Loſſes of the like Nature as thoſe mentioned before. Now Loſſes ariſing from the Fraud of the Maſter, are of the ſame Nature as if he had run away with the Ship, ſuppoſing Baratry was to be confined to that which it is not, becauſe it imports any Fraud. And the Judgment was affirmed, *April* 27, 1724. *L. Raym.* 1349. *Knight* againſt *Cambridge*. *S. C. Stran.* 581.

8. The Ship the *Gothic Lyon* being advertiſed to be going to *Marſeilles*, Goods were ſhipt on board her on Behalf of the Plaintiff, and a Bill of Lading ſigned by the Maſter, whereby he undertakes to go *à droite route à Marſeilles*, and the Defendant underwrote a Policy from *Falmouth* (where the Goods were taken in) to *Marſeilles*. Before the Ship departed from the

Port of *London*, another Advertiſement was publiſhed for Goods to *Genoa*, *Leghorn*, and *Naples*; and the Plaintiff's Agent was told, it was intended to go to thoſe Ports firſt, and then come back to *Marſeilles*: But he inſiſted that his Bargain was to go firſt, or directly to *Marſeilles*, and he would not conſent to let her paſs by *Marſeilles*, or alter his Inſurance.

The Ship however did paſs by *Marſeilles*, and after delivering her Cargo at the other Ports, ſet out on her Return for *Marſeilles* with the Plaintiff's Goods; but in her Voyage thither, was blown up in an Engagement with a *Spaniſh* Ship. And in an Action upon the Policy, the Breach was aſſigned of a Loſs by the Baratry of the Maſter. And the Plaintiff inſiſted, that any Fraud or Malverſation of the Maſter was within the meaning of the Word *Baratry*. *Du Freſne* terms it *dolus qui fit in contractibus*; and ſo do all the Dictionaries, as *Florio's Italian* Dictionary *verbo Baratria*, *Minſheu*, *Furetier*, &c. and that in the Caſes of *Knight* and *Cambridge* (the preceding Caſe) and *Knight* and *Dodd*, where the Loſs was laid to be *per fraudem* of the Maſter, the Court held it a good Aſſignment of a Breach, there being the Word *Baratry* in the Policy.

The Defendant's Counſel inſiſted, this was no more than a Deviation, in which Caſe the Inſurer is diſcharged, and the Plaintiff's Remedy is againſt the Owners or Maſter. That this cannot be called a Crime in the Maſter, when he is acting all the while for the Benefit of his Owners.

The Chief Juſtice in his Direction to the Jury told them, that this being againſt the expreſs Agreement to go firſt to *Marſeilles*, ſeemed to be more than a common Deviation, being a formed Deſign to deceive the Contractor; and compared it to the Caſe of ſailing out of Port without paying Duties, whereby the Ship was ſubjected to Forfeiture, and which has been held to be Baratry.

The Jury ſtaid ſome Time, and upon their Return, aſked the Chief Juſtice, Whether, if the Maſter

ter was to have no Benefit to himſelf by paſſing by *Marſeilles*, and went only for the Benefit of his Owners, that would be a Baratry? And the Chief Juſtice anſwering, No, they found for the Defendant.

And now a new Trial being moved for, the Caſe was argued; and all the Court was of Opinion that the Verdict was right. For the Maſter has acted conſiſtent with his Duty to his Owners, and the Plaintiff's Agent knew of the intended Alteration before the Goods were put on Board, and might have refuſed to ſhip them, or have altered the Inſurance. To make it Baratry, there muſt be ſomething of a criminal Nature, as well as a Breach of Contract; and that here the Breach being aſſigned only on the Baratry, was not ſupported by the Evidence. So the Defendant had Judgment. *Stran.* 1173. 16 *Geo.* 2. *Stamma* v. *Brown.*

9. The Inſurance was from *Carolina* to *Liſbon*, and at and from thence to *Briſtol:* It appeared the Captain had taken in Salt, which he was to deliver at *Falmouth* before he went to *Briſtol*; but the Ship was taken in the direct Road to both, and before ſhe came to the Point where ſhe would turn off to *Falmouth.* And it was held the Inſurer was liable; for it is but an Intention to deviate, and that was held ſufficient to diſcharge the Under-writer. In the Caſe of *Carter* v. *the Royal Exchange Aſſurance Company*, where Inſurance was from *Honduras* to *London*, and a Conſignment to *Amſterdam*; a Loſs happened before ſhe came to the dividing Point between the two Voyages, which the Inſurers was held to pay for. *Stran.* 1249. 19 *Geo.* 2. *Foſter* v. *Wilmor.*

10. The Ship *Mediterranean* went out in the Merchants Service with a Letter of Marque, and being bound from *Briſtol* to *Newfoundland* was inſured by the Defendant. In her Voyage ſhe took a Prize and returned with it to *Briſtol*, and received back a proportional Part of the *Premium.* Then another Policy was made, and the Ship ſet out with expreſs Orders from the Owners, that if they took another Prize,

they ſhould put ſome Hands on board ſuch Prize and ſend her to *Briſtol*; but the Ship in Queſtion ſhould proceed with the Merchants Goods. Another Prize was taken in the due Courſe of the Voyage, and the Captain gave Orders to ſome of the Crew to carry the Prize to *Briſtol*, and deſigned to go on to *Newfoundland*; but the Crew oppoſed him, and inſiſted he ſhould go back, though he acquainted them with the Orders; upon which he was forced to ſubmit, and in his Return his own Ship was taken, but the Prize got in ſafe.

And now in an Action againſt the Inſurers, it was inſiſted that this was ſuch a Deviation as diſcharged them. But the Court and Jury held that this was excuſed by the Force upon the Maſter, which he could not reſiſt; and therefore fell within the Excuſe of Neceſſity, which had always been allowed. The Plaintiff's Counſel would have made Baratry of it, but the Chief Juſtice thought it did not amount to that, as the Ship was not run away with in order to defraud the Owners. So the Plaintiff had a Verdict for the Sum inſured. *Stran.* 1264. 20 *Geo.* 2. *Elton* v. *Brogden.*

11. Caſe upon a Policy which was to inſure the *William* Galley in a Voyage from *Bremen* to the Port of *London*, *warranted to depart with Convoy*: The Caſe was, the Galley ſet ſail from *Bremen* under Convoy of a *Dutch* Man of War to the *Elb*, where they were joined with two other *Dutch* Men of War and ſeveral *Dutch* and *Engliſh* Merchant-Ships; whence they ſailed to the *Texel*, where they found a Squadron of *Engliſh* Men of War and an Admiral: After a Stay of nine Weeks they ſet out from the *Texel*, and the Galley was ſeparated in a Storm, and taken by a *French* Privateer, taken again by a *Dutch* Privateer, and paid 80*l.* Salvage. And it was ruled by *Holt*, Chief Juſtice, that the Voyage ought to be according to Uſage, and that their going to the *Elb*, though in Fact out of the Way, was no Deviation; for till the Year 1703, there was no Convoy for Ships directly from

from *Bremen* to *London:* And the Plaintiff had a Verdict. 2 *Salk.* 445. *Feb.* 14, 1704. *Bond* v. *Gonſales.*

12. If after a Policy of Inſurance a Damage happens, and afterwards in the ſame Voyage a Deviation, yet the Aſſured ſhall recover for what happened before the Deviation; for the Policy is diſcharged from the Time of the Deviation only. *Vid. Shower*, 129. *Kemp.* and *Andrews.* 2 *Salk.* 444.

SECT. V.

Of the Conſtruction of Policies, having the Words warranted to depart with Convoy.

1. THE Plaintiff inſured on Goods in the *John* and *Jane* from *Gottenburg* to *London* with a Warranty to depart with Convoy from *Fleckery.* In *July* 1744, the Ship ſailed from *Gottenburg* to *Fleckery*, and there ſhe waited for Convoy two Months. On 21ſt *September* at Nine in the Morning three Men of War, who had an hundred Merchant Ships in Convoy, ſtood off *Fleckery* and made a Signal for the Ships there to come out, and likewiſe ſent in a Yaul to order them out. There were fourteen Ships waiting, and the *John* and *Jane* got out by twelve o'Clock, and one of the firſt; the Convoy having ſailed gently on, and being two Leagues a-head. It was a hard Gale, and by Six in the Afternoon came up with the Fleet, but could not get to either of the Men of War for ſailing Orders, on account of the Gale of Wind. It was ſtormy all Night, and at Day-break the Ship in queſtion was in the midſt of the Fleet, but the Weather was ſo bad that no Boat could be ſent for Sailing Orders. A *French* Privateer had ſailed amongſt them all Night, and the 22d, it being foggy, attacked the *John* and *Jane* about Two, who kept a running Fight till dark, which was renewed the next Morning, when ſhe was taken.

For the Defendant it was inſiſted, that this Ship was never under Convoy, nor is ever conſidered ſo till they have received Sailing Orders; and if the Weather would not permit the Captain to get them, he ſhould have gone back. But the Chief Juſtice and Jury were both of Opinion, that as the Captain had done every thing in his Power, it was a departing with Convoy; and theſe Agreements are never confined to preciſe Words; as in the Caſe of departing with Convoy from *London*, when the Place of Rendezvous is *Spithead*; a Loſs in going thither is within the Policy. So that the Plaintiff recovered. *Stran.* 1250. 19 *Geo.* 2. *Victorin* v *Cleeve.*

2. On an Inſurance from *London* to *Gibraltar*, *warranted to depart with Convoy*, it appeared there was a Convoy appointed for that Trade at *Spithead*, and the Ship *Ranger* having tried for Convoy in the *Downs*, proceeded for *Spithead*, and was taken in her way thither.

The Inſurers inſiſted that this being the Time of a *French* War, the Ship ſhould not have ventured through the Channel, but have waited in the *Downs* for an occaſional Convoy. And many Merchants and Office-keepers were examined to that Purpoſe. But the Chief Juſtice held that the Ship was to be conſidered as under the Defendant's Inſurance to a Place of general *Rendezvous*, according to the Interpretation of the Words *warranted to depart with Convoy.* * *Salk.* 443, 445. And if the Parties meant to vary the Inſurance from what is commonly underſtood, they ſhould have particularized her Departure with Convoy from the *Downs.*

The Juries were compoſed of Merchants, and in both Caſes found for the Plaintiffs upon the Strength of this Direction. *Stran.* 1265. 20 *Geo.* 2. *Gordon* v. *Morley*, and *Cambel* v. *Bordieu.*

3. Action on a Policy of Inſurance; the Defendant pleaded *non aſſumpſit*, and the Jury found the

* See the following Page.

Policy,

Policy, by which the Insurers undertook against the Perils of the Sea, Pirates, Enemies, *&c.* from *London* to *Venice*, *warranted to depart with Convoy*. *Et per Cur.* the Words *warranted to depart with Convoy*, mean only that he will leave the Port, and sail with the Convoy without any wilful Default in the Master; therefore, if by Default of the Master, the Ship is separated and taken, the Insurers are not liable; but if there be no Default, the Master having done all that could be done, and the Ship is taken, they are liable: So if the Ship be lost by Stress of Weather; for they insure against these by their own Agreement. 2 *Salk.* 443. *Hill.* 2 *W.* and *M.* in *B. R. Jefferies* v. *Legandra. S. C.* 3 *Lev.* 320. 4 *Mod.* 58. 1 *Show.* 320. *Carth.* 216. *Holt's Rep.* 465.

4. Action on a Policy of Insurance by the Defendant at *London*, insuring a Ship from thence to the *East Indies*, *warranted to depart with Convoy*; and shews, that the Ship went from *London* to the *Downs*, and from thence with Convoy and was lost. After a frivolous Plea and Demurrer, the Case stood upon the Declaration; to which it was objected, that there was a Departure without Convoy. *Et per Cur.* the Clause *warranted to depart with Convoy*, must be construed according to the Usage among Merchants, i. e. from such Place, where Convoys are to be had, as the *Downs*, &c. *Holt*, Chief Justice, *contra*, We take Notice of the Laws of Merchants that are general, not of those that are particular Usages. It is no Part of the Law of Merchants to take Convoy in the *Downs*. 2 *Salk.* 443. *Mich.* 4 *W.* and *M.* in *B. R. Lethulier*'s Case.

5. *Warranted to depart with Convoy* has been resolved to import, by the Usage of Merchants, a Continuance with that Convoy as long as may be. *Luc. Rep.* 287.

6. The Plaintiff being sued at Law upon a Policy of Insurance of a Ship, and against the Barratry of the Master, which was assigned in the Declaration, brought his Bill in Chancery to be relieved; and for

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an Injunction; charging that one *Matthews* the Maſter, and alſo Owner of the Ship, had, before the Voyage, entered into a Bottomry Bond to the Defendant for 200*l.* and that after, by Bill of Sale, he aſſigned over his Intereſt in the Ship to the Defendant, as a Security for this 200*l.* and inſiſted that *Matthews* was, nevertheleſs in Equity to be conſidered as Owner of the Ship, though in Law the Ownerſhip and Property would be looked upon to be in the Defendant, and inſiſted, that the Owner of a Ship could not, either in Law or Equity, be guilty of a Baratry concerning the Ship, and therefore prayed an Injunction, and that the Policy might be delivered up.

The Voyage inſured was from *London* to *Marſeilles*, and from thence to ſome Port in *Holland*. The Caſe was, that the Maſter ſailed with the Ship to *Marſeilles*, and then, inſtead of purſuing the Voyage, ſailed to the *Weſt Indies*, and there ſold the Ship and died inſolvent. Theſe Matters being confeſſed by the Anſwer, an Injunction was moved for on the Principle, that a Mortgagor is to be conſidered in Equity as Owner of the Thing mortgaged, and that *Matthews*, the Maſter being Owner, could not be guilty of Baratry. To ſhew which, a Caſe was cited of *Hannua* and *Brown*, where it was determined the preceding Term in the King's Bench. Lord *Hardwicke*, Chancellor. Baratry is an Act of Wrong done by the Maſter againſt the Ship and Goods; and this being in the Caſe of a Ship, the Queſtion will be, who is to be conſidered as the Owner? There are ſeveral Caſes that might be put where Baratry may be aſſigned as the Breach of an Aſſurance, and Baratry or not, is a Queſtion properly determinable at Law; but here it is not ſo, for the Courts of Law will not conſider a Mortgagor as having any Right or Intereſt in the Thing mortgaged; and there are many Caſes where a Man may come into a Court of Equity for Relief, in reſpect of a Part only of his Caſe. It might indeed be conſidered at Law, whether what the Maſter hath done, ſuppoſing Owner or not, was not

a Breach

a Breach of the Contract, as Maſter of the Ship, and ſo a Baratry, and this may be conſidered likewiſe in this Court. But at Law a Defendant cannot read Part of the Plaintiff's Anſwer to a Bill brought againſt him here; the whole Anſwer muſt be read, which hath been often a Reaſon for this Court interpoſing by Injunction upon a Plaint at Law; and conſidering the mixed Nature of this Caſe, I think an Injunction ought to be granted. *Ordered accordingly. Dict. Tr. and Com.* 147. 16 *Geo.* 2. *Lewen* v. *Swaſſo.*

7. The Plaintiffs being Merchants reſiding at *Gibraltar*, and one of them coming to *London* to purchaſe Goods fit for that Place, bought to near the Value of 3000 *l.* and in order to forward them to the aforeſaid Place, he took Freight on the Ship *Ranger*, Capt. *Taylor*, which he ſaw put up, as uſual, at the *Royal Exchange* and *Portugal* Coffee-houſe, with a Declaration inſerted in the ſaid Advertiſement, *that the Ship was to ſail with the firſt Convoy*; and in Conſequence thereof he ſhipped his Merchandize and made Inſurance thereon to the Amount of 2830 *l.* inſerting in the Policy the Words *warranted to depart with Convoy*, in Conformity with the ſaid Declaration.

The Ship when loaded ſailed from *Graveſend* the 4th of *May* 1746, on her Voyage, and arrived in the *Downs* the 7th, where ſhe continued till the 21ſt, in company with the *Otter* Sloop of War, ſome *Engliſh* Merchant-Ships, and three *Dutch Eaſt India* Ships.

Captain *Taylor*, whilſt he lay in the *Downs*, having received Intelligence that the Convoy at *Spithead* was ready to ſail, went on board the *Otter* Sloop, in order to ſolicit the Commander's taking him under his Protection to *Spithead*, but this the ſaid Gentleman informed him was not in his Power to comply with, as he was ordered on a Cruize over to the Coaſt of *France*, whereupon Captain *Taylor* went on board the Commodore of the *Dutch Eaſt India* Ships, who promiſed to take the *Ranger* under Convoy to *Spithead*.

On the 12th of *May*, the *Otter* Sloop, the *Dutch*, and the *Ranger* weighed Anchor, as did alſo ſome

Engliſh

Engliſh Ships for the Benefit of that Convoy, and a few Hours after they were under Sail; the *Otter* Sloop parted from them on her Cruize, and the *Ranger* kept Company with the three *Dutch* Ships, till between four and five o'Clock the next Afternoon (being the 13th) when (in her direct Courſe to *Spithead*) ſhe was attacked by a *French* Privateer, called the *Reſource*, within three Miles of the *Dutch Eaſt India* Men, and eighteen of *Spithead*, where ſhe was to join the Convoy for *Gibraltar*, and after ſome Reſiſtance ſhe was taken and carried into *Havre de Grace*, and there regularly condemned.

The Plaintiff, on the aforeſaid Capture, applied to the reſpective Underwriters (and among them to the Defendant) requiring Satisfaction for his Loſs, but they abſolutely refuſed paying any Thing, inſiſting that the Ship had not ſailed according to the Terms of the Policy, *viz. at and from* London *to* Gibraltar, *warranted to depart with Convoy*, but as ſhe departed without Convoy (which ſhe ought not to have done) and was taken in Conſequence thereof, the Inſurers are not bound to ſatisfy a Loſs, which they never obliged themſelves to be anſwerable for; that the Ship ought to have ſtaid till a Convoy offered and not gone to ſeek at ſuch a Diſtance, as evidently expoſed her to be taken in getting thither.

On the contrary, the Plaintiff pleaded, that they had complied with the Tenor of the Policy, that the Defendant miſconceived the natural Conſtruction of the Words *warranted to depart with Convoy*, as they did not imply that the Ship ought to have departed with Convoy from the Port of *London*; as the Rendezvous for Ships, bound to *Gibraltar* and the *Streights*, is generally at *Spithead*, where they join the Convoy; and although poſſibly there may be an Inſtance or two of a Convoy ſailing from the *Nore* and the *Downs* to *Gibraltar*, yet this is an uncommon, accidental Thing, and was not to have been expected on this Occaſion; on the contrary, it was then known, that the Convoy for thoſe Parts was to be at *Spithead*, and many Ships went

went there from *London* to take the Benefit of it, ſo that the Warranty could only be underſtood from *Spithead*, as it was from the Convoy there, the Capt. was to make his ſailing Orders; beſides, as it was unſafe to lie in the *Downs* without a Man of War, the Plaintiff conceives the *Ranger* would have run a much greater Riſque, in continuing after the *Otter*'s Departure, than ſhe did in ſailing with her and the *Dutch* Ships, though they were no regular Convoy; and the Plaintiff paid the ſame Premium for his Inſurance as was given on ſeveral Ships at the ſame Time, with a Warranty to depart from any Port of the Channel: and it was the Opinion of ſeveral Merchants, that Ships ſailing with Convoy are to make the beſt of their Way to the Convoy, and not ſtay for any intermediate one. The Jury found a Verdict for the Plaintiff. *Lex Mercat. Rediviv.* 277. *Gordon* and *Murray* v. *Morley*. Sitting after *Michaelmas* Term at *Guildhall*, 1746.

SECT. VI.

Of other Circumſtances to charge or diſcharge the Aſſurers, beſides a certain and known Loſs, or a ſafe Voyage.

1. *J. S.* having a doubtful Account of his Ship that was at Sea, *viz.* that a Ship, deſcribed like his, was taken, inſured her without any Information to the Inſurers of what he had heard, either as to the Hazard or Circumſtances, which might induce him to believe that his Ship was in great Danger, if not actually loſt. The Inſurers bring a Bill for an Injunction and to be relieved. And Lord *Macclesfield* decreed the Policy to be delivered up with Coſts, but the *Premium* to be paid back and allowed out of the Coſts. *Trin.* 1723. *De Coſta* and *Scanderet.* 2 *Will. Rep.* 170. And his Lordſhip ſaid, that the Inſured has not dealt fairly with the Inſurers; that he

he ought to have diſcloſed to them what Intelligence he had of the Ship's being in Danger, and which might induce at leaſt to fear that it was loſt, though he had no certain Account; for if this had been diſcovered, it is impoſſible, to think that the Inſurers would have inſured the Ship at ſo ſmall a *Premium* as they have done, but either would not have inſured it at all, or would have inſiſted on a larger *Premium*; ſo that the Concealment of this Intelligence is a Fraud. 2 *Eq. Abr.* 635.

2. On the 25th *Auguſt* 1740, the Defendant underwrote a Policy from *Carolina* to *Holland*. It appeared the Agent for the Plaintiff had on the 23d *Auguſt* received a Letter from *Cowes* dated 21ſt *Auguſt*, wherein it is ſaid, "The 12th of this Month I was "in Company with the Ship *Davy* (the Ship in "queſtion) at Twelve in the Night loſt Sight of her "all at once; the Captain ſpoke to me the Day be-"fore that he was leaky, and the next Day we had "a hard Gale." The Ship, however, continued her Voyage till 19th *Auguſt*, when ſhe was taken by the *Spaniards*; and there was no Pretence of any Knowledge of the actual Loſs at the Time of the Inſurance, but it was made in conſequence of a Letter received that Day from the Plaintiff abroad, dated 27th *June* before.

Several Brokers were examined, who proved that the Agent ought to have diſcloſed the Letter; for either the Defendant would not have underwrote, or inſiſted on a higher *Premium*. And the Ch. J. was of that Opinion, and declared, that as theſe are Contracts upon Chance, each Party ought to know all the Circumſtances. And he thought it not material that the Loſs was not ſuch an one as the Letter imported; for thoſe Things are to be conſidered in the Situation of them at the Time of the Contract, and not to be judged of by ſubſequent Events; he therefore thought it a ſtrong Caſe for the Defendant, and the Jury found accordingly. *Stran.* 1183. 16 *Geo.* 2. *Seaman* v. *Fonereau*.

3. This

3. This was an Action upon the Caſe brought upon a Policy of Inſurance, in which the Plaintiff *declared* as follows: ——*London*, *Gyles Rooke* complains of *John Thurmond* being in the Cuſtody of the Marſhal of the *Marſhalſea* of our Lord the King, before the King himſelf, for that, whereas the ſaid *Gyles Rooke*, on the 5th Day of *October*, in the Year of our Lord 174[illegible], at *London* aforeſaid, to wit, in the Pariſh of *St. Mary le Bow*, &c. according to the Cuſtom of Merchants from Time immemorial, uſed and approved of, cauſed to be made a certain Writing or Policy of Aſſurance; purporting thereby, and containing therein, that one *Caleb Smith*, as well in his own Name, as for and in the Name and Names of all and every other Perſon and Perſons, to whom the ſame did, might, or ſhould appertain in Part, or in All, did make Aſſurance, and cauſed himſelf and them, and every of them, to be inſured, loſt or not loſt, at and from *South Carolina* to *Cowes*, upon the Body, Tackle, Apparel, Ordnance, Munition, Artillery, Boat, and other Furniture of and in the good Ship or Veſſel called the *Polly*, whereof was Maſter, under God, for that then preſent Voyage, Captain *William Henry*, or whoſoever elſe ſhould go for Maſter in the ſaid Ship, or by whatſoever other Name or Names the ſame Ship, or the Maſter thereof, was or ſhould be named or called, beginning the Adventure upon the ſaid Ship, *&c.* from and immediately following her firſt Arrival there, and ſo ſhould continue and endure until the ſaid Ship, with the ſaid Tackle, Apparel, *&c.* ſhould be arrived at *Cowes*, and there had moored at Anchor 24 Hours in good Safety; and it ſhould be lawful for the ſaid Ship in the Voyage to proceed and ſail to, and touch and ſtay at, any Port or Places whatſoever, without Prejudice to that Inſurance.—The ſaid Ship, *&c.* for ſo much as concerned the Aſſureds, was and ſhould be valued at Intereſt or no Intereſt, free from Average, and without Benefit of Salvage; without farther Account to be given by the Aſſureds for the ſame. Touching the Adven-

tures

tures and Perils, which the Aſſurers were contented to bear, and did take upon them in the Voyage, they were of the Seas, Men of War, Fire, Enemies, Pirates, Rovers, Thieves, Jettezons, Letters of Mart and Countermart, Surprizals, Takings at Sea, Arreſts, Reſtraints, and Detainments of all Kings, Princes, and People, of what Nation, Condition, or Quality ſoever, Barratry of the Maſter and Mariners, and of all other Perils, Loſſes and Misfortunes, that had or ſhould come, to the Hurt, Detriment, or Damage of the ſaid Ship, *&c.* or any Part thereof; and in Caſe of Loſs or Misfortune, it ſhould be lawful to the Aſſureds, their Servants, Factors, and Aſſigns, to ſue, labour and travel for, in and about the Defence, Safeguard and Recovery of the ſaid Ship, *&c.* or any Part thereof, without Prejudice to that Inſurance, to the Charges whereof they the Aſſurers would contribute each other, according to the Rate and Quantity of his Sum therein aſſured.—And it was agreed by them the Aſſurers, that the ſaid Writing or Policy of Aſſurance ſhould be of as much Force and Effect as the ſureſt Writing or Policy of Aſſurance heretofore made in *Lombard-ſtreet*, or on the *Royal Exchange*, or elſewhere in *London*.——And ſo they the Aſſurers were contented, and did thereby promiſe, and bind themſelves, each for his own Part, their Heirs, Executors, and Goods, to the Aſſured, their Executors, Adminiſtrators, and Aſſigns, for the true Performance of the Premiſſes, confeſſing themſelves paid the Conſideration due unto them for that Aſſurance by the Aſſured, at and after the Rate of 5 *l.* 15 *s. per cent.* and in caſe of Loſs, which God forbid, the Aſſured to abate 2 *l. per cent.* And the ſaid *Giles* avers, that the ſaid Policy of Aſſurance was ſo made as aforeſaid, in the Name of the ſaid *Caleb Smith*, on the Account and Riſk of the ſaid *Giles*; and that the ſaid *Giles*, at the time of making thereof, was ſolely intereſted therein. Of all which Premiſſes the ſaid *John* afterwards, to wit, on the Day and Year aforeſaid, at *London*, *&c.* had Notice, and thereupon, afterwards to wit,

on

on the Day and Year aforeſaid, at *London* aforeſaid, and in the Pariſh and Ward aforeſaid, in Conſideration that the ſaid *Giles*, at the ſpecial Inſtance and Requeſt of the ſaid *John*, had, then and there, paid to the ſaid *John* the Sum of 5*l.* 15*s.* as a Premium and Reward for the Inſurance of 100*l.* of and upon the Premiſſes in the ſaid Policy mentioned, and had undertaken and faithfully promiſed to perform and fulfil every Thing in the ſaid Policy of Aſſurance contained, on the Part and Behalf of the Aſſured, to be performed and fulfilled; he the ſaid *John* undertook, and then and there faithfully promiſed the ſaid *Giles*, that he would become an Aſſurer of the ſaid *Giles* for the ſaid 100*l.* of and upon the Premiſſes in the ſaid Policy mentioned; and that he would perform and fulfil every Thing in the ſaid Policy contained on his Part and Behalf, as ſuch Aſſurer, as to the ſaid 100*l.* to be performed and fulfilled, and then and there ſubſcribed the ſaid Policy, as ſuch Aſſurer for the ſaid 100*l.* and the ſaid *Giles* in Fact ſaith, that before the making of the ſaid Policy, *viz.* on the firſt Day of *May*, in the Year of our Lord 1741, the ſaid Ship or Veſſel, with all her Apparel and other Furniture, firſt arrived at *South Carolina* aforeſaid, and afterwards, to wit, on the 12th Day of *July*, in the Year of our Lord 1741 aforeſaid, the ſaid Ship or Veſſel, with all her Apparel and other Furniture, departed and ſailed from *South Carolina* aforeſaid, towards *Cowes* aforeſaid, and proceeded on her ſaid Voyage to the Port of *Cowes* aforeſaid, and afterwards, to wit, on the 18th of *July*, in the Year laſt aforeſaid, the ſaid Ship or Veſſel, with all her Tackle, Boat, and other Furniture, ſo proceeding in her ſaid Voyage, towards the Port of *Cowes* aforeſaid, before her Arrival at the Port of *Cowes* aforeſaid, on the high Seas, was with Force and Arms, in an hoſtile Manner, attacked, conquered, and taken as a Prize by certain Enemies of our Lord the King, and his Crown of *England*, to wit, by certain *Spaniards*, and Subjects of the King of *Spain*.—And the ſaid Ship or Veſſel, with all her Tackle, and other her Furniture, were

thereby, then, and there, wholly loſt, and never did arrive at the Port of *Cowes* aforeſaid.——Of all which ſaid Premiſſes, the ſaid *John* afterwards, to wit, on the firſt Day of *December*, in the Year of our Lord 1741 aforeſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, had Notice, and was, then and there, requeſted by the ſaid *Giles* to pay him 98 *l.* Parcel of the ſaid 100 *l.* 2 *l.* Reſidue of the ſaid 100 *l.* being to be abated to the ſaid *John*, on Account of the Loſs aforeſaid; which 98 *l.* the ſaid *John* ought to have paid to the ſaid *Giles*, according to the ſaid Promiſe and Undertaking——Yet the ſaid *John*, not regarding his ſaid Promiſe and Undertaking, but contriving, and fraudulently intending craftily and ſubtily to deceive and defraud the ſaid *Giles* in this Particular, hath not yet paid the ſaid Sum of Money, or any Part thereof, to the ſaid *Giles* (although ſo to do the ſaid *John* by the ſaid *Giles* was requeſted afterwards, on the Day and Year laſt aforeſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid) but he to pay the ſame to him hath hitherto wholly refuſed, and ſtill refuſes.

There was another *Count* for 5 *l.* 15 *s.* for Money had and received by the Defendant, for the Uſe of the Plaintiff.——Damages laid 100 *l.*

The Defendant pleaded the general Iſſue, *Non aſſumpſit*, and Iſſue was thereon joined.

Upon this Caſe, it was clearly taken at the Trial before *Lee* Chief Juſtice, without any Objection or Queſtion made upon it, that the Plaintiff was well intitled to maintain this Action, upon the Policy of Inſurance made in the Name of *Caleb Smith*, who was the Policy-broker employed to procure the Inſurance, he having, by Indorſement upon the Policy, acknowledged and declared that the Policy was made in his Name upon the Account, and for the ſole Riſk and Benefit of the Plaintiff; and *Smith* was allowed without any Objection, to prove the Underwriting by the Defendant, and his own Indorſement.

In this Caſe, the Defence, inſiſted on for the Defendant underwriting this Policy, was, that the Plaintiff had

had been informed by a Letter wrote from *Carolina*, by a Ship called the *Collet*, to one Mr. *Crockatt*, that the *Polly*, the Ship insured, had sailed ten Days or a Fortnight from *Carolina*, before the Ship *Collet*, and that the Ship *Collet* had arrived in *England* about seven Days before the Insurance made, and that the Plaintiff had not informed the Defendant of this, which was insisted on to be a Fraud in the Plaintiff, sufficient to discharge the Defendant of this Insurance, it being, as was insisted, a settled and established Rule, that, on making an Insurance, all material Circumstances, relating to the Adventure, ought to be disclosed to the Insurer, for him to judge upon; and the Chief Justice allowed this Rule, and declared his Opinion, that the Concealment insisted on was a sufficient Circumstance to Discharge the Defendant from the Policy; for he said, that these Contracts are made upon a mutual Faith and Credit; and that to conceal such Circumstances, which may make any Difference in the Adventure, is fraudulent; for the Insurer ought to have the Advantage of Judgment upon them; and that where there is such Concealment, the Insurance ought not to bind.——But the Defendant not being able to make out this Fact to the Satisfaction of the Jury, the Plaintiff had a Verdict.

N. B. In this Case the Insurance was a Re-assurance; and it was said by several Policy brokers, that where Policies are made, Interest or no Interest, it is generally in such Cases of Re-insurances. *Dict. Tr. and Com.* 148, 16th *December* 1743, at *Guildhall*. *Rooke* v. *Thurmond*.

4 One Thousand Pound was insured on the Ship called the *St. Clair*, Prize to the *Neptune*, and on her Cargo, between the 6th and 8th of *September* 1758, at and from *Naples* to *Leghorn*, warranted free of Average, unless general, at six Guineas *per cent.* Premium, and in Case of Loss, to abate two *per cent.* as usual.

The Plaintiff in his Declaration averred, that the Ship before the making the Assurance, to wit,

on the *3d Day of Auguſt* 1758, was in good Safety at *Naples*; with the like Averment as to the Goods, and the Property of them; and that the Ship on the ſame Day departed from *Naples* on her Voyage towards *Leghorn*, and *on the 25th of Auguſt* was taken as a Prize by the *French*, and wholly loſt to the Proprietor.

The Diſtance from *Naples* to *Leghorn* is computed about ſixty Leagues, and the Voyage may be made, if the Winds are fair, in two Days; ſo that the conſtant Uſage is when a Policy is tendered to the Underwriters, to inſure for ſo ſhort a Voyage, to inform them of a Certainty when the Ship was ſafe in Port, leſt ſhe ſhould be taken before ſhe is underwrote, or a miſſing Ship, at the time of underwriting her: in the latter Caſe many Underwriters will not for *any* Conſideration underwrite a miſſing Ship, and ſuch as do, always expect and receive a Premium, which they conſider as adequate to the Riſque.

About the latter End of *Auguſt* 1758, Mr. *Butler* a Policy-broker received Orders from Mr. *Richard Willis*, to inſure 1000 *l.* on the Ship and Cargo for the Voyage in Queſtion, and to give a Premium of ten *per Cent.* but as he could not give any certain Account when the Ship was ſafe in Port, he could not get the Inſurance done either by the private Underwriters, or at the public Offices, although he offered ten Guineas *per Cent.* whereof he adviſed Mr. *Richard Willis* his principal.

On the 6*th* Day of *September* 1758, Mr. *Richard Willis* applied again to the Policy-broker, and informed him, that he had received Advice from the Plaintiff Mr. *Livewell Green* his Correſpondent at *Naples*, that the *St. Clair* had put to Sea, but by Streſs of Weather, was drove back to *Naples*, and was ſafe in Port there *on the 8th of Auguſt:* whereupon the Policy-broker, in the Preſence of Mr. *Willis*, wrote down in his Broker's Book as follows: " In *Naples* the 8th of *Auguſt*, 1000 *l.* on Ship and " Cargo valued, *St. Clair*, Prize to the *Neptune*,

" *Green, Naples* to *Leghorn.*" And informed Mr. *Willis*, he made no doubt but this being a Fact, he ſhould get the Policy underwrote at ſix Guineas *per Cent.* Premium, and accordingly filled up a Policy to be tendered as uſual to the Underwriters, and at the Bottom of the Blank-ſide of the Policy tranſcribed theſe words from his Broker's Book, which always contains the Inſtructions from the Aſſured.

On the ſame 6th of *September*, the Policy-broker offered the Policy to Mr. *John-Anthony Rucker*, to be underwrote by him, after acquainting him with the above Circumſtances, and in particular, that the Ship was ſafe in Port on the 8th Day of *Auguſt*, and ſhewing the Memorandum at the Foot of the Blank-ſide of the Policy of that Import, upon which Mr. *Rucker* made the following Obſervation to the Broker, *viz. that there were Letters from Leghorn of the* 14*th Day of Auguſt, which took no Notice of the* St. Clair's *Arrival there, and that altho' ſhe was in Port at* Naples *on the* 8*th, ſhe might have been arrived by the* 14*th.* The Broker replied, that as the Ship was put back after her firſt Sailing, in foul Weather, there was no Probability *that ſhe ſhould ſail ſo ſoon as the* 8*th*, or until the Winds and Weather were favourable. This Remark of the Broker, who had for many Years been a Commander of Merchants Ships in that Trade, being a reaſonable Preſumption connected with the Warranty of the Ship's being ſafe in Port on the 8th of *Auguſt*, Mr. *Rucker* underwrote the Policy for 100 *l.* as did Mr. *William Bowden* the Defendant, and the *two other* Underwriters, and within two Days afterwards, ſix more Underwriters, for 100 *l.* each, *in toto* 1000 *l.* was ſubſcribed on the Policy. On the 8th Day of *September* the Policy thus underwrote, was ſent by Mr. *Butler* or Mr. *Peter Mauger* his Partner, to Mr. *Willis*, and on that or the next Day, Mr. *Richard Willis* informed the Broker, that the Letter from his Correſpondent, mentioned, that the Ship *ſailed the* 3*d*, and not, *that ſhe was in Port the* 8*th of Auguſt*, to which Mr. *Mau-*

ger anſwered, that Mr. *Butler* had certainly taken down the Minutes according to his Inſtructions, whereupon Mr. *Willis* delivered the Policy to Mr. *Mauger*, in order to get the Conſent of the Underwriters, to alter the Minute at the Foot of the Policy.——The ſame Day the Policy-broker applied to Mr. *Rucker*, and informed him of the Miſtake, as to the Warranty of the Ship's being ſafe in Port on the 8th, inſtead of the 3d of *Auguſt*, who thereupon inſiſted on ſtriking his Name off the Policy, which the Policy-broker would not agree to, without Leave of his Principal, which Anſwer of Mr. *Rucker* was communicated to Mr. *Willis*, by Mr. *Mauger* the ſame Day.

On *Tueſday the* 12*th Day of September*, Mr. *Butler* on his Return to Town out of the Country, being informed by Mr. *Mauger* of the Miſtake of the 8th, inſtead of the 3d of *Auguſt*, went to Mr. *Willis*'s Houſe, and told him that he had informed every one of the Underwriters, that the Ship was ſafe in Port on the 8th Day of *Auguſt*; and that he apprehended, that if any Accident ſhould happen the Aſſured would not be ſafe in relying on the Aſſurance. Whereupon Mr. *Willis* gave him Orders to get the Sum re-inſured, and give a Premium of ten, twelve, or even fifteen Guineas *per Cent.* which Mr. *Butler* endeavoured to do, by applying to a Number of Underwriters, but could not effect it, or get any Sum underwrote on the Policy.

This being therefore the ſingle Point in Conteſt between the Underwriters, to ſhew their Candour, and to ſave Expence, have entered into the following Agreement:

" Whereas a Policy of Inſurance was made in the " Name of Mr. *Richard Willis*, for the Uſe and " Account, and in Truſt for Mr. *Livewell Green*, at " and from *Naples* to *Leghorn*, warranted free of " Average, unleſs general upon any Kind of Goods " and Merchandize, and alſo upon the Body, Tackle, " Apparel, Ordnance, Munition, Artillery, Boat

" and

" and other Furniture of the good Ship and Veſſel " called the *St. Clair*, Prize to the *Neptune*, begin- " ning the Adventure at *Naples*, and to continue " till the ſaid Ship and Goods ſhould be arrived at " *Leghorn*; and the ſaid Ship and Cargo were by " the ſaid Policy valued at the Sum inſured, which " ſaid Policy of Inſurance was underwrote by us the " underwritten Inſurers reſpectively, in Conſidera- " tion of 6*l.* 6*s. per Cent.* for the Sum of 100*l.* each, " on or about the 6th, 7th, and 8th Days of *Septem-* " *ber* 1758, as by the ſaid Policy may more at large " appear. And whereas the ſaid inſured Ship and " Goods were totally loſt to the Proprietor hereof, " on or about the 25th Day of *Auguſt* 1758; and a " Queſtion hath aroſe between the Inſured and the " Inſurers on the ſaid Policy, whether the Inſurers " are liable to pay ſuch Loſs or not, and thereupon " Actions are intended to be brought by the ſaid " *Livewell Green*, againſt the reſpective Underwriters " on the ſaid Policy for Recovery of ſuch Loſs, " againſt each of them reſpectively. Now to avoid " the Expence of proving ſuch Facts as are not " controverted between the Underwriters and Aſ- " ſured; we the underwritten, Inſurers, and alſo " the Aſſured, do therefore reſpectively promiſe and " agree, to admit at the Trial of every Action to be " brought againſt each of the Inſurers, on the ſaid " Policy of Inſurance, the ſeveral Facts hereafter " mentioned, that is to ſay;

" That the ſaid Policy of Inſurance was ſubſcrib- " ed by the Inſurers reſpectively, for the Sum of " 100*l.* each at the Time therein reſpectively men- " tioned.

" That the ſaid Inſurance was made in the Name " of the ſaid *Richard Willis*, in Truſt, and for the " Uſe and Benefit of the ſaid *Livewell Green*, who " was Captain or Commander, and ſole Owner of a " certain private Ship of War called the *Neptune*.

" That the ſaid Ship was in Safety at *Naples*, the " 3d of *Auguſt*, 1758; and that the ſaid *Livewell*

" *Green, on the 3d of Auguſt* 1758, *when the ſaid Ship* " *ſailed from Naples*, and on the 25th of *Auguſt*, " when ſhe was taken by the *French*, was intereſted " in the ſaid Ship *St. Clair*, and in the Goods loaded " on board, valued in the ſaid Policy at the Sum in- " ſured.

" That the ſaid Ship and her Cargo were taken by " the *French*, on the 25th of *Auguſt*, when ſhe was " proceeding in her Voyage from *Naples* to *Leghorn*."

If the Inſtructions taken down by the Broker, had mentioned that the Ship was in Port the 3d, and not the 8th of *Auguſt*, very few Underwriters would have underwrote the Policy for any Premium, and thoſe who would, would not have done it for leſs than twenty Guineas *per Cent.* inſtead of ſix, and it ſeems now to be a ſettled Point, from a vaſt Variety of Determinations, that in every Policy Caſe the *ſuggeſtio falſi*, or *ſuppreſſio veri*, makes void the Policy, ſo determined in *Seaman* and *Fonnereau. Hil.* 1741. See Page 174.

It was ſo determined in the Cauſe of *Williams* againſt *Touchett*, which was tried before Lord *Manſfield* on the 1ſt Day of *May*, Inſtant, on the Aſſured's receiving a private Letter, intimating a Suſpicion of the Ship's Deſtination, which Letter was ſecreted from the Underwriters.

If the Fact had been diſcovered, that the Ship ſailed the third, and was not in Port the eighth of *Auguſt*, no Underwriter of Credit would have ſubſcribed the Policy for twenty Guineas *per Cent.* Premium as this Caſe is circumſtanced. Verdict for the Defendant. At *Guildhall* Sittings, after *Trinity-term*, 1759. *Livewell Green* againſt *William Bowden*.

5. In *June* 1749, the Defendant had applied to an Office-keeper or Broker to inſure 1600 *l.* for one Year at five *per Cent.* on the Life of one *Poulton*, from whom the Defendant had agreed to purchaſe an Eſtate, whereof *Poulton* had the Reverſion in Fee, and alſo an intervening Eſtate for his own Life.

The

The Broker anſwered, that the Courſe of the Office was to produce the Perſon, whoſe Life was to be inſured, in order to be inſpected by the Inſurers or Underwriters; to which the Defendant replied, that the Perſon lived at a great Diſtance in the Country; and that it was very inconvenient for him to come to London; and on the Broker's aſking the Defendant whether he was a good Life, the Defendant anſwered he was, and added, that he would leave a Note of his Name and Place of Abode, which he accordingly did. On this Declaration of the Defendant, the Broker procured ſixteen Perſons to underwrite a Policy of Inſurance for 1600 *l.* on *Poulton*'s Life at the Rate of Intereſt, and for the Time before mentioned; and about ſix Months afterwards *Poulton* died. In 1750 the Defendant brought an Action on the Policy, in the Court of Common Pleas, and had a Verdict for him; in Conſequence of which the Plaintiff, who was one of the Underwriters, paid him 98 *l.* as for his Part of the Inſurance-money; but in 1751, brought his Bill in the Court of Chancery, ſuggeſting Fraud and Impoſition. The Defendant admitted in his Anſwer, that *Poulton* was a drunken Fellow; upon which the Lord Chancellor at the Hearing directed an Action at Law to be brought, which was done accordingly; and there was a Verdict for the Plaintiff, but the Jury acquitted the Defendant of Fraud; and the Cauſe now coming on before the Lord-Keeper for further Directions, the Queſtion was, whether the Defendant ſhould pay Intereſt for the 98 *l.* which he received, and alſo the Coſts in Equity: And to prove that he ought not to pay Intereſt, L. *Raym.* 398, was cited; where Chief Juſtice *Holt* ſaid, "Intereſt is never given by the "Jury in ſuch a Caſe;" [this was for Money won upon a Wager,] and to ſhew that he ought not to pay Coſts, 3 *Wms.* 205 was cited, where the Lord Chancellor declared, that *a Man ought not to be puniſhed for defending his Right.*

Lord-Keeper: This Cauſe comes now before me after a Verdict for the Plaintiff, and another Verdict for

for the Defendant, at Law, and my Determination thereon ſhall not be grounded on any Imputation on Sir *Criſp Gaſcoigne*, who is as worthy a Gentleman, and in as full Credit as any Merchant in *London*. The Defendant brought an Action at Law in which he prevailed; which made it neceſſary for the Plaintiff to apply to this Court; the Juriſdiction whereof is concurrent and concomitant with, and auxiliary to that of the Common Law in Caſes of Fraud; to the End that all Perſons may have the neceſſary Meaſure of Juſtice, according to the various Modifications of their Rights.———I have conſtantly attended at *Guildhall* during the laſt War, and was concerned in various Caſes of this Nature; and by all the foreign Books as well as our own, the Learning concerning Inſurances, as well of Lives as of Ships, was thoroughly ſettled and eſtabliſhed. Every Party concerned in an Inſurance muſt communicate every Circumſtance he knows, in order to aſcertain the Premium; which otherwiſe will be affected and the Policy void. Thus, if a Man comes to inſure a Ship, and ſays ſhe was ſuch a Day ſafe in ſuch a Place, he aſſerts it at his Peril, though he does it *inſcienter*; for when you come to inſure, the Perſon you apply to ſuppoſes you to be a Man of Prudence and Caution, and that every thing you ſay is true; becauſe, otherwiſe, Men ſhould be put to vain, idle, and expenſive Purſuits, and, perhaps, to no Purpoſe. The Reaſon the Defendant prevailed at Law, was, that his Declaration did not appear on the Face of the Inſtrument of Inſurance. The Plaintiff by the Bill ſuggeſted a Fraud, and wanted a Diſcovery in order to defend himſelf; and was therefore intitled to come here; but at his Peril, if he came wantonly; and that he had a Right to apply to a Court of Equity, is evident from the Verdict, which he obtained on a full Diſcovery of all the Circumſtances of the Caſe. As to the Intereſt, I think it would be given at common Law, where a Man ſues for, recovers and receives a groſs Sum of Money unduely; and I ſhould not ſit here, were I to ſuffer a Man to receive a Sum of Money and keep

it without making any Satisfaction for the Detention of it. What would the Merchants of *Lombard-ſtreet* think of ſuch Proceedings? It is objected, there was a Verdict for and another againſt the Defendant; and that therefore the Matter is in Equilibrio; but the Verdict for him was the Cauſe of the Suit here; where he came to defend himſelf. The Diſtinction with reſpect to Coſts is where one of the Parties is to blame, in which Caſe the Court may exerciſe a Diſcretion. Decreed Intereſt on the 98*l.* together with Coſts. In the Court of Chancery, *April* 15th, 1758, between *Cleeve* and Sir *Criſp Gaſcoigne*.

6. If theſe Words, *loſt or not loſt*, are inſerted in the Policy of Aſſurance, in ſuch Caſe, tho' it happens that at the Time the Subſcription is made, the Ship is caſt away, yet the Inſurers muſt anſwer: But if the Party, who cauſed the Inſurance to be made, actually ſaw the Ship wrecked, or had certain Intelligence of it, ſuch Subſcription will not be obligatory, for the ſame ſhall be accounted a mere Fraud.

So likewiſe if the Aſſured, having a rotten Veſſel, ſhall inſure upon the ſame more than ſhe is worth, and afterwards give Order that, going out of the Port, the Ship ſhall be ſunk or wrecked, this will be adjudged fraudulent, and not oblige the Inſurers to anſwer. *Molloy*, B. 2. C. 7. § 5.

7. In the Year 1678, one *Newnham Perkins* and *Stoakes* were Owners of a Veſſel called the *May-flower* Ketch, the Veſſel coming laden with Wines on the Account of *Fierbraſſe* and *Stone*, to the Iſle of *Wight*; *Perkins* being then in the ſame Place, contrives with one *Joy* the Maſter to ſell the Freighters Goods privately, and, that being effected, to go out to Sea ſome ſmall Diſtance from the *Iſle*, and there privately ſink the Veſſel, and pretend ſhe ſtruck, and then foundered by the Extremity of Weather. The Plot being laid, *Perkins* haſtens up to *London*, and makes a Policy of Inſurance on the Veſſel; which being done, he remits his Orders to *Joy* to put the Contrivance in execution; who accordingly (the Goods or the beſt of them being

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diſpoſed of) ſtood out to Sea, and then with his own Hands, by the Force of an Iron Crow, made a Hole in the Hold, and then in his Long-boat conveyed himſelf and Mariners aſhore. *Joy* ſends Advice of the Loſs; and *Perkins* (as if he had never known any thing of the Matter) demands the Money aſſured with great Confidence, and thereupon brings an Action for the ſame; but before the Cauſe came to a Trial, *Fierbraſſe* and *Stone* bring *Trover* againſt *Perkins*, and thereupon the whole Fraud was detected, and Judgment given for the Plaintiff; with this further Intimation, that if the Owners proceeded in their Action on the Inſurance, they muſt expect that their Practice and Fraud would totally poiſon it: So they went no farther. *Molloy*, B. 2. C. 7. §. 5.

8. *Per Holt* Ch. Juſtice, if the Goods were aſſured as the Goods of an *Hamburgher*, who was an Ally, and the Goods were the Goods of a *Frenchman* who was an Enemy; this is a Fraud, and the Aſſurance is not good. *Skin.* 327. *Mich.* 4 *W.* and *M. B. R. Anon.*

9. At *Guildhall*, in an Action upon the Caſe upon a Policy, which warranted *that the Ship ſhall have four Paſſes, viz.* a Paſs from the King of *England*, from the King of *France*, from the King of *Poland*, and the States of *Holland*; and the Goods were to be the Goods of ſuch a *Poliſh* Subject on board the Ship vocat. *The City of Warſaw.* An Action upon this Policy being brought, it appeared upon the Evidence, that the Paſſes bore Date in *April* or *May*, and that the Ship, to which they applied theſe Paſſes then, was called by another Name; and that ſhe was not named the *City of Warſaw* before the *Auguſt* following; and therefore theſe were not good and effectual Paſſes for this Ship according to the Guaranty of the Policy, which intended good Paſſes, and not eluſory vain Paſſes; and they being a Fraud upon the Subſcribers, the Policy ſhall not bind them. *Skin.* 404. *Mich.* 5 *W.* and *M. B. R. Anon.* Another Objection was, that the Paſſes were for Goods *which belonged to the Subjects of the King of* Poland, and ſo

reſtrained

reſtrained only to them; but the Goods on board were not of the Subjects of *Poland*, but of *Holland*, and therefore not within the Intent of the Policy. *Idem ibid.*

10. Stat. 4 *Geo.* 1. Cap. 12. S. 3. *If any Owner of, or Captain, Maſter, Mariner, or other Officer, belonging to any Ship, ſhall wilfully caſt away, burn, or otherwiſe deſtroy the Ship, or direct or procure the ſame to be done, to the Prejudice of any Perſons that ſhall underwrite any Policy of Inſurance thereon, or of any Merchants that ſhall load Goods thereon, he ſhall ſuffer Death.*

11. Stat. 11 *Geo.* 1. Cap. 29. S. 5. *If any Owner of, or Captain, Maſter, Officer, or Mariner, belonging to any Ship, ſhall wilfully caſt away, burn, or deſtroy the Ship, or direct or procure the ſame to be done, with Intent to prejudice any Perſon that ſhall have underwritten any Policy of Inſurance thereon, or any Merchant ſhall load Goods thereon, or any Owner of ſuch Ship; the Perſons offending being thereof convicted ſhall be adjudged Felons, and ſuffer Death without Benefit of Clergy.*

S. 6. *If any of the ſaid Offences ſhall be committed within the Body of any County, the ſame ſhall be inquired, determined and adjudged, as Felonies done within any County are to be; and if any of the ſaid Offences ſhall be committed upon the high Seas, the ſame ſhall be tried and adjudged, as by* 28 Hen. 8. *Cap.* 15.

12. The Ship *Charming Peggy* was inſured in 1739 from *North Carolina* to *London*, with a Warranty againſt Captures and Seizures. And in an Action the Loſs was laid to be by ſinking at Sea. All the Evidence given was, that ſhe ſailed out of Port on her intended Voyage, and has never ſince been heard of. And ſeveral Witneſſes proved, that in ſuch a Caſe the Preſumption is, that ſhe foundered at Sea, all other Sorts of Loſſes being generally heard of. The Underwriter inſiſted, that as Captures and Seizures were excepted, it lay upon the Aſſured to prove the Loſs in the particular Manner declared on. But the Chief Juſtice ſaid it would be unreaſonable to expect certain Evidence of ſuch a Loſs, as where every

Body

Body on board is preſumed to be drowned; and all that can be required is the beſt Proof the Nature of the Caſe admits of, which the Plaintiff has given; he therefore left it to the Jury, who found the Loſs according to the Plaintiff's Declaration. *Strang.* 1199. 17 *Geo.* 2. *Green* v. *Brown.*

13. If a Ship be inſured *from the Port of London* to *Cadiz*, and, before the Ship breaks Ground, takes Fire and is burnt, the Aſſurers in ſuch Caſe ſhall not anſwer; for the Adventure begun not till the Ship was gone from the Port of *London:* But if the Words had been, *at and from the Port of London*, there they would upon ſuch a Misfortune have been made liable.

If ſuch an Aſſurance had been made from *London* to *Cadiz*, and the Ship had broke Ground, and afterwards been driven by Storm to the * Port of *London*, and there had taken Fire, the Inſurers muſt have anſwered; for the very breaking of Ground from the Port of *London* was an Inception of the Voyage.

On the other hand, if a Man at *Cadiz* inſures a Ship from thence to *London*, if a Loſs happens, the Aſſurer, if he comes into *England*, ſhall anſwer by the *Common Law*; for though the Place where the Subſcription was made, and the *Premium* given was in a foreign Country, yet that is not material; for the Action that is brought is grounded on the Promiſe, which is tranſitory and not local; and ſo it was adjudged where the Defendant in Conſideration of 10 *l.* had inſured, that if the Plaintiff's Ship and Goods did not come ſafe to *London*, he would pay 100 *l.* Afterwards the Ship was robbed on the Sea; and in an Action brought for the 100 *l.* the Plaintiff had Judgment, notwithſtanding the Robbery or Loſs was on the main Sea, and the Subſcription out of the Realm.

* The Port of *London* extends from the *North Foreland* in the Iſle of *Thanet*, over in a Line to the *Naſe* in *Eſſex*, and from thence to *London Bridge*. *Rot. Scaccar.* 19. *Car.* 2.

Molloy,

Merchant, and not as a Satisfaction for ſparing the reſt; in this Caſe, becauſe the Remainder is not aſſured thereby, but freely ſpared, no Contribution is to be made for the Goods taken to charge any Aſſurer with any Part thereof. But Contribution ſhall be made for Goods ſpoiled by Wet, or other Accident. Again, if it be needful to lighten a Ship for her eaſier Entry into Harbour or Channel, two Parts of the Loſs fall upon the Goods, and the third upon the Ship, unleſs the Ship be more valuable than the Lading, and the Charge of the Goods be not the Cauſe of her Inability to enter, but ſome bad Quality proceeding from the Ship itſelf, or that it be provided otherwiſe in the Charter-party. *Molloy*, B. 2. C. 7. §. 14. *Malynes*'s *Lex Mercat.* 109.

17. If prohibited Goods are laden aboard, and the Merchant inſures upon the general Policy, which always contains theſe Words: *Of the Seas, Men of War, Fire, Enemies, Pirates, Rovers, Thieves,* * *Jetteſons, Letters of Mart and Counter-mart, Arreſts, Reſtraints and Detainments of Kings and Princes, and all other Perſons, Baratry of the Maſter and Mariners, and of all other Perils, Loſſes and Misfortunes, whatſoever they be, and however they ſhall happen to come, to the Hurt and Detriment of the Goods and Merchandize, or any Part or Parcel thereof*; whether if ſuch Goods be lawfully ſeized as prohibited Goods, the Inſurers ought to anſwer? It is conceived they ought not; and the Difference hath been taken, where Goods are lawful at the Time of lading to be imported into that Country, which they are conſigned for; but by Matter *ex poſt facto* after the lading they become unlawful, and after Arrival are ſeized, there the Aſſurers muſt anſwer, by Virtue of the Clauſe, *and all other Perils*, &c. But if the Goods were at the Time of lading unlawful, and the Lader knew of the ſame,

* *Jetteſon*, *Jetſon*, or *Jetſam* (from the *French Jetter*, i. e. *jactare*, to caſt away) a Term ſignifying any Thing thrown out of a Ship, being in Danger of a Wreck, and by the Waves drove on Shore.

ſuch

Molloy, B. 2. Cap. 7. §. 9. cites 7 *H.* 6. 14. in *Quare impedit.* 34 *Hen.* 8. *Tit.* 107. *Mich.* 30, 31 *Eliz.*

14. A Merchant inſures his Goods from *London* to *Sallee*, and there to be landed. The Factor after Arrival, having Opportunity, ſells the Cargo aboard the ſame Ship without ever unlading her; and the Buyer agrees for the Freight of thoſe Goods for the Port of *Venice*. Before ſhe breaks Ground, the Ship takes fire. The Aſſured and Buyer are abſolutely without Remedy; for the Property of the Goods becoming * changed, and Freight being contracted *de novo*, the ſame was as much as if the Goods had been landed.

And ſo it is if the Factor, after her Arrival, had contracted for Freight to another Port, and the Ship had happened to take fire, the Aſſurers are hereby abſolutely diſcharged for ever. *Molloy*, B. 2. C. 7. §. 13. cites *Locin*, L. 2. C. 5. §. 9.

15. If a Ship be inſured from *London* to
and a Blank be left by the Lader to prevent her Surprize by the Enemy. In her Voyage ſhe happens to be caſt away, and tho' there be private Inſtructions for her Port, yet the Aſſured muſt ſit down by the Loſs by Reaſon of the Uncertainty. So in caſe a Blank be left in the Policy for the Value of the Ship or Leading, if a Loſs happens, and there be not Words to ſupply this Defect, the Aſſured may endanger the Policy. *Molloy*, B. 2. C. 7. §. 14. in Caſe of Monſ. *Gourdan* Governor of *Calais*, *an.* 1585.

16. Where Goods are redeemed from a † Pirate, Contribution muſt be paid by all, becauſe the Redemption is made for the Safety of all; but if the Pirate be once Maſter of the whole, and yet takes only ſome particular Goods, whether from the Ship or

* By the Laws of *Antwerp*, there is a Time allotted after a Ship's Arrival at her Port, how long the Adventure is to be borne by the Inſurers, which is about fifteen Days. Art. 13. *Aſſecur. Antwerp.*

† If a Ship inſured be taken by Pirates, this is comprehended in the Words *Perils of the Sea*. *Stiles* 132. 2 *Rolls Abr.* 248.

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ſuch Aſſurance will not oblige the Aſſurers to anſwer the Loſs; for the ſame is not ſuch an Aſſurance as the Law ſupports, but is a fraudulent one. *Molloy*, B. 2. C. 7. §. 15.

18. A Policy was made from *Cadiz* to *Vera Cruz* in *New Spain*, upon Monies lent upon Bottomry, and upon any Kind of Goods and Merchandize whatſoever laden aboard the good Ship called the *Neuſtra Seignora del Carmen* and *Mary Magdalen*, the Adventure beginning immediately from the lading before a Day to come, and the Monies from the Time they were to be lent, and ſo to continue from *Cadiz* to *Vera Cruz*, and after Delivery; with Proviſo to ſtay at any Port or Place in her Voyage, and likewiſe to touch at *Porto Rico*, and there to lade and unlade without any Prejudice to the Inſurance, the Cargo being valued at 1700 *l. Sterling* without Account, *&c.* againſt *Seas*, *Men of War*, *Fires*, *Enemies*, *Pirates*, *Rovers*, *Thieves*, *Jetteſons*, *Letters of Mart and Countermart*, *Surprizals at Sea*, *Arreſts*, *Reſtraints and Detainments of all Kings*, *Princes*, *and People*, *of what Nation*, *Condition or Quality ſoever*. The Ship being laden at *Cadiz*, departed towards *Vera Cruz*, and before Arrival there, touching at *Port Rico*, the Goods were there ſeized and arreſted. In an Action brought upon the Policy, the Defendant pleaded, that the Ship at her Arrival at the Port of *Rico*, was laden with prohibited Goods and Merchandize, which, together with the Ship, became forfeited by Default of the Proprietors, and were there ſeized and taken. The Queſtion was, if the Owners ſhould inſure, and then order prohibited Goods to be laden, whether, if theſe Goods are ſeized, they ſhould recover againſt the Inſurers? The ſecond Objection was, if (as the Defendant had pleaded this Plea) the ſame were good? As to the firſt, the Court did all incline, that the Inſurance ought to be * *bona fide*, i. e. the Reſtraint

* In hoc contractu bona fide verſandum eſt, ut natura ultro citroque obligationis poſtulat. *Locin.* Lib. 2. Cap. 5. §. 8.

ought to be of ſuch Goods as by Law were not reſtrainable; but ſurely that cannot be; for the Intention of Policies are to warrant the Perils of all Manner of Goods in all Manner of Caſes. So that if there be a Loading *bona fide*, be it prohibited or not, the ſame in Caſe of Loſs ought to be anſwered, unleſs it were a fraudulent Contrivance: But to the ſecond, it was reſolved that the Plea was inſufficient; for the admitting the ſame ſhould not oblige the Inſurer, yet becauſe the Defendant did not ſhew that the Goods were laden either by the Inſured, or by the Factor or Order (for otherwiſe the ſame ſhould not conclude them; becauſe perhaps the Maſter or his Mariners, or a Stranger might load them on board without Order) the Court gave Judgment for the Plaintiff upon the mere Inſufficiency of the Manner of pleading, and not of the Matter. *Molloy*, B. 2. C. 7. §. 15.

19. But if a Merchant will freight out * Wool, Leather, and the like, or ſend out Goods in a † foreign Bottom, and then inſures, and afterwards the Ship happens to be taken, by reaſon of which the Ship and Lading are forfeited, the Inſurers ſhall not anſwer the Damage; for the very Foundation was illegal and fraudulent, and the Law ſupports only thoſe Aſſurances that are made *bona fide*; for if it were otherwiſe, and Men could inſure againſt ſuch Actions, it would deſtroy Trade, which is directly to thwart the Inſtitution and true Intention of all Policies of Aſſurance. *Molloy*, B. 2. Cap. 7. §. 15. *Houbland* v. *Harriſon*. *Hill.* 31, 32. *Car.* 2. *B. R.* Like Judgment was given againſt *Lethulier ad S. Houbland*, *Trin.* 32. *Car.* 2. in *B. R. Rot.* 168.

20. But if Goods ſhould happen to be lawfully inſured, and afterwards the Veſſel becomes diſabled, by reaſon of which they relade, by Conſent of the Supercargo or Merchant, into another Veſſel, and

* Prohibited by 12 *Car.* 2. *C.* 32. 14 *Car.* 2. *Cap.* 7.

† Prohibited by 12 *Car.* 2. *Cap.* 18.

that

that Veſſel, after Arrival, proves the Ship of an Enemy, by reaſon of which the Ship becomes ſubject to Seizure; yet in this Caſe the Inſurers ſhall anſwer; for that this is ſuch an Accident as is within the Intention of the Policy. *Molloy*, B. 2. C. 7. §. 15. cites *Ritterſhus, ad Leg. Contract.* 23. *de Reg. Jur.* Cap. 18. P. 236, 237. *Stypman dicto loco num.* 335.

21. Several Men lade aboard Salt without Diſtinction, not putting it in Sacks, and the like; the Ship arrives, the Maſter delivers to the Principals according to their Bills of Lading, as they come out one by one; it falls out that ſome of the Salt is waſhed or loſt by reaſon of the Dampneſs of the Ship, and that the two laſt Men cannot receive their Proportion: There are, in this Caſe, three Things to be conſidered.

1. Whether the Maſter is bound to deliver the exact Quantity?

2. Whether thoſe who have received this Loſs can charge the Aſſurers?

3. Whether the Aſſurers can bring in the firſt Men for a Contribution, they having their Salt delivered to them completely?

Certainly the Maſter is not bound to deliver the exact Quantity, nor is he obliged to re-deliver the very ſpecific Salt, but only as Men are to receive and pay Money or Corn in a Bag or Sack, and out of them; but if the Fault was in not pumping, keeping dry his Deck, or the like, there *e contra:* Though perhaps there may be a ſpecial Agreement; beſides, this is a Peril of the Sea, which the Maſter could not prevent, and of neceſſity he muſt deliver to one firſt before another.

As to the ſecond, it is no Queſtion but that the Aſſurers ſhall anſwer; but whether they ſhall bring in the firſt Men for Contribution may be ſome Doubt.

It has been conceived by ſome that they ought not; for they delivered their Salt to the Maſter *tanquam in creditum*, and was not to expect the Redelivery

of the ſame ſpecific Salt; beſides the Maſter muſt of Neceſſity deliver to one Man before another.

But by others it has been conceived they ought to contribute *pro ratione*; for as of Goods, ſome muſt neceſſarily be ſtowed in the Hold (and ſuch Goods ſeldom eſcape the Peril of the Sea) ſo the reſt muſt of neceſſity contribute to that Misfortune, and therefore make no Diſtinction. *Molloy*, B. 2. C. 7. §. 15. *Laſtlow* and *Tomlinſon*'s Caſe. *Hobart*, Fol. 88.

22. The Defendant inſured Goods to *London, and until the ſame ſhall be ſafely landed there:* The Ship arrived in the Port of *London*, and the Owner of the Goods ſent his Lighter, and received the Goods out of the Ship: But before they reached Land an Accident happened, whereby the Goods were damaged; for which this Action was brought againſt the Inſurer. For the Defendant it was inſiſted upon, that the Accident happening after the Owner had taken the Goods into his Poſſeſſion, it was a Loſs after the Inſurance was ended. To which it was anſwered that if this had been an Action againſt the Maſter or Owners of the Ship, that would have been a good Anſwer; for they were entirely diſcharged; but in this Action it could be no Anſwer, for during all the Voyage it might as well be ſaid the Goods were in the Poſſeſſion of the Aſſured, who took the Ship to freight, and whoſe Servant the Maſter was, to this Purpoſe as much as the Lighter-Man: And theſe Words are put into Policies, to guard againſt all Sorts of Loſſes, till there is an actual Landing; becauſe in the Caſe of Ships of great Burthen, that are forced to lye off, there may be a Carriage for many Miles in Boats or Lighters, and it was in the Courſe of Trade for the Owner of the Goods to ſend his Lighter. But the Chief Juſtice held the Inſurer was diſcharged. He ſaid it would have been otherwiſe, had the Goods been ſent by the Ship's Boat, which is conſidered as Part of the Ship and Voyage. And the Jury (which was of Merchants) expreſſing, they thought it turned upon

on that Distinction, brought in a Verdict as to this Point against the Plaintiff. *Strange*, 1236. 18 *Geo.* 2. *Sparrow* v. *Caruthers*.

23. The Ship *Success* was insured at and from *Leghorn* to the Port of *London*, and till there moored 24 Hours in good Safety. She arrived the 8th of *July* at *Fresh-Warf*, and moored, but was the same Day served with an Order to go back to the *Hope* to perform a fourteen Days Quarantine. The Men upon this deserted her, and on the 12th the Captain applied to be excused going back, which Petition was adjourned to the 28th, when the Regency ordered her back; and on the 30th she went back, performed the Quarantine, and then sent up for Orders to air the Goods. But before she returned the Ship was burnt on the 23d of *August*. And now the Question was, whether the Insurer was liable.

For the Defendant it was insisted, that the Ship arriving and being moored on the 8th of *July*, and remaining so till the 30th, here was a Performance of what he had undertaken, and his Risque ought not to be extended to so long a Time as the 8th of *July* and the burning, the 23d of *August*.

But it was ruled that though the Ship was so long at her Moorings, yet she could not be said to be there *in good Safety*, which must mean the Opportunity of unloading and discharging; whereas here she was arrested within the 24 Hours, and the Hands having deserted, and the Regency taken Time to consider the Petition, there was no Default in the Master or Owners. And it was proved that till the fourteen Days were expired, there could be no application to air the Goods. Wherefore the Jury found for the Plaintiff. *Strange*, 1243. 19 *Geo.* 2. *Waples* v. *Eames*.

24. The Plaintiff insured Interest or no Interest on any Ship he should come in from *Virginia* to *London*, beginning the Adventure on his embarking on board such Ship; the Money to be paid, though his Person should escape, or the Ship be retaken. He embarked

on board the *Speedwell*, but ſhe ſpringing a Leak at Sea, he went on board the *Friendſhip*, and arrived ſafe at *London:* But the *Speedwell* was taken after he left her. And now in an Action againſt the Underwriter he was held liable; for the Inſurance is on the Ship the Plaintiff ſet out in; and had that got ſafe Home, and the other been loſt, the Plaintiff could not have recovered upon the Foot of having removed his Perſon into that Ship in the Middle of the Voyage. *Strange*, 1248. 19 *Geo.* 2. *Dick* v. *Barrel.*

25. Upon the Execution of a Writ of Enquiry before the Chief Juſtice, it appeared that the Defendant was an Inſurer to 200*l.* upon Corn, the Value of which was 217*l.* that the Corn was ſo damaged in the Voyage, that it ſold only for 67*l.* and the Freight came to 80*l.* And upon this the Queſtion was, whether as the Freight, which the Plaintiff was obliged to pay, exceeded the Salvage; this was not to be conſidered as a total Loſs.

And for the Plaintiff it was inſiſted, that he ought not to be in a worſe Condition, than if his Corn had gone to the Bottom of the Sea. For then he would have had no Freight to pay, and now that the Voyage has been performed, whereby the Freight is become due, he has a Right to apply the Salvage to diſcharge that. It was proved to be the Uſage, where the Salvage exceeds the Freight, to deduct the Freight out of the Salvage, and make up the Loſs upon the Difference.

For the Defendant it was inſiſted, that as his Inſurance was upon the Corn, and the whole did not periſh, he ought in making up the Loſs to deduct the Salvage: But no Inſtance could be ſhewn on either Side of an Adjuſtment, where the Freight exceeded the Salvage.

The Chief Juſtice was of Opinion that within the Reaſon of deducting the Freight when the Salvage exceeds it, the Plaintiff was in this Caſe (wherein it fell

fell ſhort) intitled to have it conſidered as a total Loſs. And the Jury found for the Plaintiff accordingly. *Strange*, 1065. 10 *Geo.* 2. *Boyfield* v. *Brown.*

26. The Plaintiff inſured on Ship and Freight at and from *Jamaica* to *Briſtol.* A Cargo was ready to put on board; but the Ship being careening, in order for the Voyage, a ſudden Tempeſt aroſe, and ſhe and many others were loſt. The Rigging and Parts of her were recovered and ſold; and the Defendant paid into Court as much as upon an Average he was liable to for the Loſs of the Ship: But the Plaintiff inſiſted to be allowed 600*l.* for the Freight the Ship would have earned in the Voyage, if the Accident had not happened. But as the Goods were not actually on board, ſo as to make the Plaintiff's Right to Freight commence, the Chief Juſtice held he could not be allowed it. 19 *Geo.* 2. *Strange*, 1251. *Tongue* v. *Watts.*

27. Where a Policy of Inſurance is againſt *Reſtraint* of Princes, that extends not where the Inſured navigate againſt the Laws of Countries, or where there ſhall be a Seizure for not paying the Cuſtom or the like. 2 *Vern.* 176. *Per Hutchins*, Lord Commiſſioner.

28. On a Policy of Inſurance on Goods by Agreement valued at 600*l.* and the Aſſured not to be obliged to prove any Intereſt; the Lord Chancellor ordered the Defendant to diſcover what Goods he put on board; for although the Defendant offered to renounce all Intereſt to the Inſurers; yet his Lordſhip referred it to a Maſter to examine the Value of the Goods ſaved, and to deduct it out of the Value, or Sum of 600*l.* at which the Goods were valued by the Agreement. 2 *Vern.* 715. *Mich.* 1716. *Le Pypre* and *Farr.*

29. *A.* had inſured for *B.* and Plaintiff his Aſſignees on the Ship *E.* with the Cargo, and the Entry in the Company's Book of the Contract was in ſhort *Items* called a *Label*, which was thus: "At and from *Fort*

"*St. George* to *London*, loſt or not loſt." And the Policy was ſoon after made out and taken in the following Words: "That the Adventure was to Commence from the Ship's departing from *Fort St. George* to *London*." Before the Inſurance was made the Ship was loſt in *Bengal* River, whither ſhe had been ſent from *Fort St. George* to refit. The Bill was brought to have the Inſurance-Money paid, being 500*l.* as a Loſs, &c. and founded the Equity, *that the Policy was not made agreeable to the Label, according to which the Riſque is to commence from the Ship's coming firſt to* Fort St. George, *and the going to* Bengal *to refit, being a Thing of Neceſſity for performing the Voyage was no Deviation, and the Loſs being during that Time, was within the Intent of the Contract for the Inſuring.*

Lord Chancellor *Hardwicke* ſaid this was not proper to determine here. The firſt Queſtion is as to the Agreement: Second, as to the Breach; and doubted as to the Agreement. The Memorandum is not a printed Form as to the material Points, and the Policy muſt be governed by that, if not varied. The Words in the Memorandum or Label *(at Fort St. George)* include the Stay of the Ship there, and the Policy follows the Words, but adds thus, *viz. The Beginning of the Adventure to be from the Ship's departing from* Fort St. George *for* London; which excludes the Riſque whilſt the Ship ſtayed there; and this ſeems an Inconſiſtency in the Policy, firſt to deſcribe the Voyage *at and from*, &c. and then to exclude the Riſque *at*, &c. This ſeems a Miſtake in writing the Policy, and is to be rectified as in the Caſe of Articles or Settlement. And decreed the Words to be added in the Policy, *for the Adventure to commence at and from* Fort St. George. *Vin. Ab. Tit.* Bottomry Bonds. *A.* 10. *December* 6, 1739. *Motteux* and *London Aſſurance.*

30. One *Mary Stroad* having an Intereſt in ſome Houſes in *London*, for the Remainder of a Term of which above five Years was to come, inſured the ſame

from

from Fire, by a Policy of Inſurance entered into by the *Hand-in-Hand* Company for Inſurances of Houſes from Fire; which Inſurance was made for a Term of ſeven Years, and a Premium paid accordingly. It happened that after the End of the five Years, and before the End of the ſeven Years, the Houſes were burnt down; after which *Mary Stroad* aſſigned the Policy to the Saddler's Company, who were entitled to the Houſes after the Determination of the Term of *Mary Stroad*. This Bill was brought by the Plaintiffs againſt the *Inſurance* Company, to have this Inſurance made good, inſiſting thereon, by reaſon that a Premium was paid to the Company for the whole ſeven Years, within which Space of Time this Accident hath happened. And as this Inſurance is expreſsly to *Mary Stroad*, her Executors, Adminiſtrators and Aſſigns, that the Plaintiffs, as her Aſſigns, are well entitled to have the Policy made good.

It was urged, that this Inſurance Company, being an amicable Society, who inſure each other with a joint Stock, and the Plaintiffs, being as Aſſignees of *Mary Stroad*, Members of the Society, was the Reaſon for ſeeking Relief by Bill in Equity, and not purſuing a Remedy at Law, in regard that no Action would lie; for that the Plaintiffs by ſtanding in the Place of *Mary Stroad*, might be ſaid to be Part of the Society, and therefore could not proſecute an Action againſt themſelves. For the Defendant it was inſiſted, that the Intent of theſe Policies is only to inſure ſome certain *Intereſt* in the Party inſured from Loſs or Damages, and that, when ſuch *Intereſt* ceaſes, the Inſurance is at an End. It was alſo inſiſted to be an antient Rule of the Society, that no Perſon ſhould be permitted to inſure for a leſs Term than ſeven Years, and that ſubſequent to the Plaintiffs Inſurance, an Order of the Company was made, reciting, that whereas all Inſurances by the Rules of the Company, were to ceaſe with the *Intereſt* of the Aſſured, yet that the Inſurers might aſſign their Policies: This Order was

inſiſted

inſiſted upon as Evidence, to ſhew, that by the Rules of the Company, they are anſwerable for no Loſs or Damage happening by Fire to the Houſes inſured, after the Intereſt of the Aſſured is determined.

In this Company, as in all other Inſurance Companies, there is a Rule that the Policy ſhould be of no Effect, if aſſigned, unleſs brought to be allowed by the Company within ſuch a Time; but it was admitted, that the Plaintiffs had tendered the Aſſignment to the Company, within the Time for ſuch Allowance, but they had refuſed it.

In regard to the Order made, that all Aſſurances were to ceaſe with the Intereſt of the Aſſured, Lord Chancellor *Hardwicke* ſaid, the Aſſured were to be conſidered in a double Capacity, as Members of the Company, and as Perſons contracting with them; and that if the Caſe depended upon this Order, he ſhould not think the Company, in their general Capacity, could vary or alter any Contract made by them to their individual Members: But that he was of Opinion, from the Nature of all Inſurances, that the Aſſurance muſt ceaſe with the Intereſt of the Aſſured, for it is only to ſave from Damage in the Thing inſured; and where it is to inſure Damages from Fire, how can the Inſurers enter upon the Premiſſes to rebuild or repair when the Eſtate of the Aſſured is determined? An Inſurance implies an *Intereſt* in the Thing inſured: If it were otherwiſe many ill Conſequences might follow; Men might inſure Houſes of Strangers, and in Hopes of getting the Money inſured, ſet their Houſes on Fire.

And though, in Caſes of Commerce, Policies of Inſurance are allowed to be made, Intereſt or no Intereſt, yet it was long before this could prevail, and was allowed only in reſpect that Goods might be inſured in a Commerce which is prohibited in a foreign Country, and to prevent (in regard to the Advantage of the Trade to this Kingdom) a Diſcovery of the Nature of the Goods, and thereby laying open the

Owner

Owner in ſuch foreign Country to the Penalty for Trading in ſuch Goods. That although ſuch Policies are now allowed, yet he remembers them much queſtioned and called fraudulent, but no ſuch Reaſon holds in the Caſes of Inſurances of Houſes from Fire; and in which Inſurances all ſuppoſe an *Intereſt* in the Aſſured.

In the Caſe of *Lynch* and *Dalzel*, which was before the Houſe of Lords, in *March* 1729, one *Ireland* being intitled to the Remainder of a long Term of Years in a Houſe at *Graveſend*, cauſed the ſame to be inſured from Fire in the *Sun-Fire-Office*, and the Inſurance was to him, his Heirs, Executors, Adminiſtrators and Aſſigns. *Ireland* dying, his Son and Executor agreed with the Appellant to ſell and aſſign to him this Houſe, together with the Benefit of the Policy for the Inſurance of the Houſe. The Leaſe of the Houſe was accordingly aſſigned, but, there being no Aſſignment of the Policy prepared, that was only delivered up, and, in Fact, not aſſigned; but *Ireland* promiſed to execute an Aſſignment of it to the Appellant at any Time after.

But before the Policy was aſſigned the Houſe was burnt down, and a Bill was brought in this Court by the Appellant to compel the Company to pay the Money inſured by the Policy, and the Bill was diſmiſſed by Lord Chancellor *King*, and his Order affirmed by the Lords. Lord Chancellor ſaid, that he was Counſel in the Caſe, and that the Reaſons upon which Lord Chancellor *King* diſmiſſed the Bill appear in the Reaſons mentioned in the Reſpondent's Caſe. That theſe Policies are not Inſurances of the Things themſelves mentioned to be inſured, for no Body can warrant againſt Accidents. Nor do ſuch Inſurances attach on the Thing, or in any Manner go with it, as incident thereto, by any Conveyance or Aſſignment of the Thing inſured: But the Inſurances are only ſpecial Agreements with the Perſons inſuring againſt ſuch Loſs and Damages as *they* ſhall ſuſtain,

and

and the Party inſuring muſt have a *Property* at the Time of the Loſs, or he can ſuſtain no Loſs, and conſequently be intitled to no ſatisfaction. Lord Chancellor obſerved, that this Caſe was rather ſtronger than the preſent, but diſmiſſed the Bill only without Coſts. *Dict. Tr. and Com.* 147. In Chan. 16 *Geo.* 2. *Saddlers Comp.* v. *Badcock.*

31. A Bill in *Chancery* was brought for Relief againſt a Verdict and Judgment given in the Court of *Common Pleas* upon a Policy of Inſurance, and to have an Injunction to ſtay Execution upon the Judgment. The Caſe appeared to be, that the Ship inſured was taken by a *Spaniſh* Privateer; and that after it had been carried *infra hoſtium præſidia*, it was retaken by an *Engliſh* Privateer. It was argued for the now Plaintiff, who was the Defendant at Law, that although by the Law of Nations the firſt Capture of the Ship, and its being *infra hoſtium præſidia*, had abſolutely diveſted the Right of the original Proprietors, yet that now by the Statute made in the Year 1740, it is otherwiſe, being thereby provided, that if the Ships of our *Engliſh* Merchants ſhould be taken by an Enemy, and afterwards retaken by any of his Majeſty's Subjects, that the Right of the original Proprietors in ſuch Ships ſhould be reſerved on their paying one Moiety of the Value of ſuch Ships to the Recaptors for Reſalvage. Upon that it was argued, that the Verdict and Judgment are unjuſt, in regard that the whole Inſurance-Money is given in Damages when it appears that the Plaintiff at Law, upon Payment of one Half of the Value of the Ship, might recover it back, and therefore that one Half of the Inſurance-Money ought only to have been given in Damage; upon which the Injunction prayed by the Bill was moved for.

On the other Side, it was inſiſted that this was a right Verdict, and that the Inſured were not to be put to the Delay, Expence, and Trouble of aſcertaining the Value of the Ship, in order to recover it

it back, upon Payment of one Moiety of the Value to the Captors. That for Recovery thereof, the Inſurers might ſtand in the Place of the Inſured, and make Uſe of their Names, which had been offered. That they did not pretend to oppoſe ſo much of the Bill as ſought this, but inſiſted that this could be no Ground for granting the Injunction prayed. That this Point had been debated before Lord Chief Juſtice *Willes*, upon Trial of the Iſſue at *Niſi Prius*, who had declared his Opinion, that this Right of Salvage ought not to preclude the Inſured from their Recovery upon the Inſurance, till the Salvage ſhould be ſettled. That the Defendants, the Inſurers, would be intitled to ſtand in the Place of the Inſured, to make what Advantage they could of the Salvage.

Lord *Hardwick*, Chancellor, being of the ſame Opinion, refuſed to grant the Injunction; and ſaid that the Damage, in recovering the Salvage, is as much a Part of the Inſurance as the Ship itſelf. *Dict. Tr. and Com.* 148. *Mich.* 18 *Geo.* 2. *Prendle* v. *Hartley.*

32. This was an Inſurance on Goods by the *Durſley* Galley, *Intereſt or no Intereſt*, at and from *Jamaica* to *Briſtol.* In her Paſſage ſhe was taken by a *Spaniſh* Privateer and carried into *Mores*, a Port in *Spain*, kept eight Days and then cut out by an *Engliſh* Ship. And the Plaintiff inſiſting, that this, though on Goods, was to be conſidered as a Wager on the Bottom of the Ship, brought his Action as upon a total Loſs. The Defendant inſiſted that by the Statutes 13 *Geo.* 2. C. 4. and 17 *Geo.* 2. C. 34. this Ship is to be reſtored to the Owners, paying Salvage; and conſequently this is only an average Loſs, and the Plaintiff can only recover upon a total one. But the Chief Juſtice held, that in this Caſe the Plaintiff ought to recover; for his is a Wager upon a total Loſs in the Voyage, and here has happened one; for the being carried into Port and detained eight Days makes one. And where the Policy is Intereſt or no Intereſt,

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the Proviſions of the Acts in the Caſe of valued Policies cannot take Place. The Act does not declare the Property is not gone by ſuch a Capture, but only provides for reſtoring the Ship to whom it *did* and ſhall be proved *to have belonged*. He ſaid it might be otherwiſe, where the Recapture was before the Ship was carried *intra præſidia*, or in the Caſe of Goods actually on board, and upon a valued Policy. *Stran.* 1250. 19 *Geo.* 2. *Dean* v. *Dicker*.

33. Action on a Policy of Inſurance of Goods on board a Ship called the *Three Brothers*, at and from *Peterſburgh* in *Ruſſia* to *London*, and till the Goods ſhould be ſafely landed. It appeared in Evidence, that the Ship arrived ſafe at *London*, and came as nigh to the Wharf as ſhe could, and then the Merchant inſured ſent a Lighter for the Goods, and they were ſunk in the Lighter. The Court held the Inſurer not liable. Verdict for the Plaintiff for 40*s*. for Return of the Ship with Convoy, ſuch Deduction being agreed to by the Policy, and the 40*s*. not being returned or brought into Court. This Verdict was on a *Count* for the 40*s*. as Money had and received to to the Plaintiff's Uſe. *Dict. Tr. and Com.* 149. 19 *July at Guildhall*. *Sparrow* v. *Caruthers*.

34. A Ship inſured was in her Voyage ſeized by the Government and turned into a Fire-ſhip: The Queſtion was, whether the Inſurers were liable? *Holt*, Chief Juſtice, thought it was within the Word *Detention*, but the Cauſe was referred. 2 *Salk.* 444. *Hill.* 1 *Ann. B. R.*

35. In Caſe on a Policy of Inſurance, upon *non aſſumpſit* pleaded, the Caſe was, Mr. *Criſp* being at the *Weſt Indies*, ſent a Letter to *Bates* to inſure Goods on the *Mary Galley* of *St. Chriſtophers*, Captain *A. Hill* Commander, at *London*: *Bates* carried the Letter to *Stubbs*, who writ Policies, and he by Miſtake made the Aſſurance on the *Mary*, Captain *Haſlewood* Commander, *&c.* This Policy thus made was ſubſcribed by the Defendant: The *Mary-Galley* was loſt, and then *Stubbs* applied to the Inſurers to conſent to alter

the Policy, to which they agreed, and the Miſtake was mended. It was objected at the Trial, that the *Mary* was a ſtouter Ship than the *Mary-Galley*, and that the Inſurers ought to have an Increaſe of *Premium* for the Alteration: But it was held by *Holt*, Chief Juſtice, that the Action well lay, and that the Miſtake might be ſet right, and that *Stubbs* was a good Witneſs; and he cited this Caſe which happened when *Pemberton* was Chief Juſtice. An Inſurance was made from *Archangel* to the *Downs*, and from the *Downs* to *Leghorn*; but there was a parole Agreement at the ſame Time, that the Policy ſhould not commence till the Ship came to ſuch a Place; it was held the parol Agreement ſhould not avoid the Writing. 2 *Salk.* 444. *Dec.* 3, 1703. *Bates* v. *Graham et al.* at *Guildhall.*

36. The Snow *Tryal*, *William Jefferys* Maſter, was taken up by the Government of *Carolina* as a Flag of Truce, to go to the *Havanna*, with Pretence to bring from thence ſome *Palatines*, lately taken and carried in there on board an *Engliſh* Ship, the *Lydia*, Captain *Abercomby*, and by this Occaſion ſeveral *Carolina* Merchants loaded Goods aboard her to a very conſiderable Value, and directed their Friend, Mr. *James Crokatt* of *London*, to get 16000 *l.* inſured on them, and at the ſame Time to inform the Underwriters of every Circumſtance of the Voyage, *viz.* that the Cargo conſiſted of eighty or ninety Negroes, and the reſt Manufacturers of *Great Britain* and *Germany*, all which was to be regularly cleared out for *Providence*, where the Veſſel was to have liberty to call, in her Voyage down, for a Pilot; the Aſſured alſo mentioned the Probability that one Maſter of the *Spaniſh* Language might go in the Character of Captain of the Flag, by the aforeſaid Government, and *Jefferys* only appear as Pilot, though the latter was to ſign all Bills of Loading; and the ſame Inſurance was ordered from the *Havanna* to *Carolina*, as was made to the *Havanna*. Mr. *Crokatt* got the 10000 *l.* inſured at four private Offices, at and from *South Carolina*

rolina to the *Havanna*, and at and from thence back to *South Carolina*, with liberty to touch at *Providence*, outward and homeward bound, upon any kind of Goods, laden or to be laden aboard the Ship called the *Tryal* (a Flag of Truce Ship) *William Jefferys* Maſter, beginning the Adventure from, and immediately following the loading thereof aboard the ſaid Ship at *South Carolina*, and ſo to continue until the ſaid Ship, with the Goods whatſoever, ſhall be arrived at the *Havanna*, and ſo ſhall farther continue till arrived back at *South Carolina*, and the ſame there ſafely landed; and it ſhall be lawful for the ſaid Ship in this Voyage to ſtop and ſtay at any Ports or Places whatſoever, more eſpecially at *Providence*.

At the Foot of ſome of the Policies are theſe Words, *viz. Warranted a Flag of Truce for the Voyage*; and in the others (after deſcribing the Voyage) *the Ship being a Flag of Truce for the Voyage.*

The *Tryal* ſailed from *South Carolina* to the Iſland of *Providence* (after the Captain had received his Credentials from the Governor, as Commander of a Flag of Truce Ship) where ſhe arrived, and diſpoſed of Part of her Cargo, and then ſailed directly towards the *Havanna*; and being arrived near the Entrance of the Harbour was ſeized by a *Spaniſh* Ship of War, and carried into ſaid Place, where her Loading was condemned and ſold, and the Ship, Officers and Sailors detained near five Months; at the Expiration of which Time, the Governor of the *Havanna* permitted them to return, with ſome *Engliſh*, who had been made Priſoners, but without the *Palatines* they went to re-claim, and the Governor gave the Captain a Protection to ſcreen him in his Return from being moleſted by Men of War or Privateers.

Mr. *Crokatt*, on receiving Advice of the above mentioned Loſs, demanded the Money of the Inſurers, who thinking they had reaſon to deny the Payment, ſuffered themſelves to be ſued for it; and Mr. *Crokatt*, to ſupport his Demand, offered to produce the Invoice, Bill of Lading, credential Letters, and an Affidavit

under

under the Seal of the Province of *Carolina*, atteſting that the Goods contained in the Invoice were ſhipped, and Witneſſes who were ready to prove, *viva voce*, the Capture and Sale of the Goods at the *Havanna*, the Detention of the Mariners, and that the Ship returned, *as a Flag of Truce*, with 49 *Engliſh* Priſoners to *Carolina*.

On the other hand, the Underwriters, to invalidate the Inſurance, pretended that this was an illicit Trade, that the Ship was not a Flag of Truce, or if ſhe was ſo, that the Aſſured, by warranting her to be ſo, did in effect engage that the Goods ſhould be exempt from Seizure: That to intitle the Plaintiffs to a Recovery, it was incumbent on them to ſhew the Condemnation, and the Reaſons of the Confiſcations at the *Havanna*, and many other Arguments were uſed to ſet aſide the Policy; but the Jury found a Verdict for the Plaintiffs. *Lex. Mercat. red.* 267. At *Guildhall* at the Sittings after *Hill.* Term 1745. *Hill. & al.* v. *Spencer.*

37. The *Mary*, Capt. *Wilſon*, was hired at *London* to carry Goods to *Dublin*, and an Inſurance was made on Ship and Freight; but in her Paſſage ſhe ran aſhore on the Sands called *Artelow Grounds*, and was there deſerted by the Captain and Sailors, who went a ſhore to ſave their Lives, ſuppoſing the Ship irretrievably loſt; but ſome Fiſhermen, hearing of the Wreck the Night before, went out after her, and early in the Morning ſpied a Sail off *Mayenhead* near *Artelow* in the County of *Wicklow*, and about 30 Miles from *Dublin*, lying afloat in about 10 or 11 Fathom of Water, and about a Mile and a half from Shore, which proved to be the aforeſaid Ship *Mary*; and on coming up with her in the laſt Quarter Ebb, they found the Ship lying to, with her Gib Sail hauled to windward, and her Mizzen Sail ſet, and on boarding her found her intirely deſerted, without one Perſon therein.

After the Fiſhermen had got in, they ſounded the Pumps, and found ſo little Water in her, that two

Hands cleared her in an Hour's Time, after which ſhe leaked but very little; and ſome few Hours after, the Fiſhermen meeting with a Pilot, agreed with him for Half a Guinea to carry her into *Polebegg* (which is a Place where Ships bound for *Dublin*, that draw much Water, are unloaded and diſcharged) where ſhe was delivered to Captain *Wilſon*, who took her in charge, and was afterwards moored, and all her Cargo delivered ſafe and undamnified, and the Freight accordingly paid for the ſame.

The Ship was after her Diſcharge, removed from *Polebegg* to the Bank-ſide, and there laid on the Ground to ſearch if ſhe had received any Damage, and it was found that nine or ten Feet of her Sheathing was rubbed off, and about the ſame Quantity of her falſe Keel broke, and the Ship ſtrained very much; ſo that they were forced to carry her back to *Polebegg*, and there moor again.

The Plaintiff demanded the whole Inſurance, which was 700 *l.* on a ſuppoſed Proof of the Ship's being rendered unfit for any future Service, by her being run aſhore as aforementioned; and the Defendant tries to invalidate his Claim, by firſt endeavouring to prove that ſhe could not be of near the Value inſured, as ſhe was an old *New-England* built Ship, and ſold a little before, to be broke up, for 150 *l.* but the Purchaſer reſold her to another, who ſold the Moiety thereof to the Plaintiff, as he aſſerts, for 400 *l.* the Truth of which Sale the Defendant ſuſpects, as well upon Account of the Lowneſs of the firſt Purchaſe, as an Eraſure upon which the Concern was wrote; and he likewiſe offers ſome Reaſons to ſuppoſe that the Ship was wilfully run aſhore, and not undeſignedly, as the Captain aſſerts: And to ſupport theſe Allegations, he refers to the Manner in which ſhe was found, with little or no Damage, as aforeſaid, more than what was occaſioned by her lying aground: That the Captain had a very bad Character, and it was ſuſpected he had made large Inſurances, which induced him wilfully to loſe the Ship, more eſpecially

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as the Mate had declared, that if the Captain would have left him two Boys, he would not have quitted the Ship, and ſeveral other Things to the Purpoſe aforeſaid: but theſe not appearing ſo plain to the Jury, they found a Verdict for the Plaintiff. *Lex Merc. red.* 368. At *Guildhall*, after *Mich.* Term, 1747. *Huſſey* againſt *Hewit.*

38. The *Weſterwyk's Arms*, Capt. *Richard Horner*, a *Swediſh* Ship and Commander, was chartered at *Hamburgh* by Mr. *Jacob Baſonquet* a Merchant there, to ſail for *London*, and there to take in ſuch Goods as he or his Correſpondent ſhould put aboard her, and carry them to ſuch Parts of *Italy* as he ſhould be directed.

A large Quantity of Goods were loaded aboard her, to the Value of 30 or 40,000*l.* and among the Shippers the Plaintiff was one who took this Opportunity of ſending his Friends Woollens to the Amount of 1367 *l.* 12 *s.* 7 *d.* conſigned to one Mr. *Anthony Damiani* a Merchant at *Leghorn*, for the Uſe of ſeveral Perſons in *Italy*, by whoſe Orders they were ſhipped, though with the Circumſtance that the Property was not to be veſted in them, neither were they to pay for them, till the Goods were arrived and delivered according to the Bill of Loading, and conſequently the Plaintiff's Property till the aforementioned Particulars were complied with, which induced him to get 1000*l.* inſured on them; and it was mentioned in the Policy, that the Goods were warranted to be inſerted in the Bills of Loading, *for neutral Account.* This was a Cuſtom during the War, in order to ſcreen Goods from the Enemy's Seizure; and the Captains of neutral Ships would not ſign Bills of Loading without this Inſertion, which was Mr. *Boehm*'s Motive for filling up his accordingly.

This Ship in her Voyage was taken by a *Spaniſh* Privateer, and carried into *Ceuta*, a *Spaniſh* Port on the Coaſt of *Barbary*, where the Goods were condemned as lawful Prize, as appears by a Copy and Tranſlation of the Sentence of Condemnation, tho'

the Ship was ſet at Liberty, and the Captain, after fruitleſly ſoliciting the Releaſe of his Cargo at *Ceuta*, went to *Cadiz* to reclaim it; where, notwithſtanding he was joined in Solicitations by the *Swediſh* Conſul, and both aſſerted the Honour of the Flag, and the neutral Property of the Merchandize, they could prevail nothing towards altering of the Sentence, which ſtood confirmed, though, whilſt this was tranſacting, Mr. *Boehm* demanded his Inſurance of the Underwriters, who being convinced of the Juſtneſs thereof, came to the Agreement of paying him 50 *l. per cent.* and accordingly indorſed the Policy in the following Manner, *viz.*

We, whoſe Names are hereunto ſubſcribed, do agree to pay unto the Aſſured 50 *l. per cent.* on our ſeveral Subſcriptions on this Policy, in a Month from the Date hereof; but in caſe the Goods are reſtored in Safety, and are diſcharged according to the Tenor of the Policy, and ſaid 50 *l. per cent.* are to be repaid to us by the Aſſured, we engaging to make good any Average or Damages that may enſue by the Detention of the ſaid Goods.

Signed by all the Underwriters.

And afterwards there was likewiſe indorſed the following Words, *viz.* Whereas the within mentioned Ship, *Weſterwyke's Arms*, Capt. *Horner*, from *London* to *Leghorn*, was taken by the *Spaniards* in *July* 1746, and forcibly carried into *Ceuta*, where ſhe has been detained with her Cargo ever ſince, and, notwithſtanding all the Application and Endeavours that have been made uſe of by the Aſſured and his Agents for their Releaſe, they having hitherto proved fruitleſs and without Succeſs; therefore we the Underwriters on this Policy, do agree to pay Mr. *Thomas Boehm*, the aſſured, the remaining 48 *per cent.* in one Month from the Date hereof, which the ſaid Mr. *Thomas Boehm* obliges himſelf to refund and pay back again, in caſe his ſaid Goods ſhould be hereafter releaſed, and arrive ſafe at *Leghorn* according to the Tenor of this Policy, we engaging ourſelves to make

good

good any Average or Damage that may enſue in this Adventure; and the Aſſured promiſes and obliges himſelf to continue his utmoſt Endeavours that the ſaid Goods may be reſtored and diſcharged.

The preſent Defendant only ſigned the firſt of theſe Agreements, but never paid the Money purſuant thereto, tho' all the reſt of the Underwriters ſigned both, and have paid the Money long ago.

The Plaintiff proved, that the Defendant was acquainted, when he underwrote the Policy, with the Reaſons for inſerting the Words, That the Goods ſhould be warranted to be inſerted in the Bills of Loading for neutral Account. He alſo proved his Intereſt, and that the Goods were his, till delivered: That all the Underwriters on this Ship have paid their Loſſes, to the forementioned Value of between 30 and 40,000 *l.* and that even the Defendant himſelf had paid one on her. He alſo proved by a Perſon *viva voce*, who had ſeen the Ship at *Cadiz*, and heard the Captain and *Swediſh* Conſul diſcourſe about the Solicitations for freeing the Goods, which joined to the beforementioned Copy of her Condemnation, he thought ſufficient Proof of the Loſs; but the Defendant, being of a contrary Opinion, and not ſatisfied therewith, ſtood a Trial, when the Jury found a Verdict for the Plaintiff. *Lex. Mercat. red.* 269. *Mich.* 1748. *Boehm.* v. *Snow.*

39. The *Dartmouth Galley*, being fitted out as a Privateer, ſailed in Company with the *Fortune*, in *October* 1744, on a Cruize, and the Plaintiffs being concerned therein, got Inſurance made on their Part for one Calendar Month, of which the Defendant wrote 200 *l.* and the ſaid Ships, after being out two Days, fell in with two *French* Men of War, with whom the *Dartmouth* engaged; and, after a gallant Defence, was taken by them, tho' not till the Captain and two more were killed, and ſeveral wounded; when the Lieutenant, ſeeing the Inequality of the Combat, ordered the Colours to be ſtruck, and ſurrendered; on which the Conquerors ordered the *Dartmouth*'s People

to hoiſt out their Barge, and go, as many as could, on board the Men of War. But the *Dartmouth*'s Men, finding an Opportunity, ſailed away and got off. Their Enemies purſuing and overtaking them, they were obliged finally to ſubmit; and the Men of War ſent a Lieutenant, with a ſufficient Power, to take Poſſeſſion of the *Dartmouth*, in whoſe Cuſtody we continued only about an Hour and a Half, or two Hours; for the Lieutenant and his Company, perceiving ſhe was leaky by one of the Men of War running foul of her, and ſtarting a Plank during the Engagement, called his Commanders to ſend a Boat for them, as they feared ſinking; which they immediately complied with, and the Lieutenant of the *Dartmonth*, and about 90 of her Men, were carried into *France*; and the Boatſwain being left on board with about twenty more (including the nine wounded) ſearched for, and in great Meaſure ſtopped her Leaks, and taking Advantage of the *Frenchman*'s Fears and the Night, in two Days after got ſafe into *Dartmouth*, and, ſoon after her Arrival there, was refitted by the Owners, and ſailed on another Cruize.

After this the ſaid Ship was kept inſured from Month to Month, and the Defendant underwrote ſeveral ſubſequent Policies on her, being always told by the Office-keeper that he was off the firſt Policy, and neither he nor the Plaintiffs ever pretended to demand any Thing of him on Account thereof.

In about ſix Months after the Expiration of the aforeſaid Policy, the Defendant paid the Plaintiffs a Loſs on her, having continued to inſure her monthly from the Policy in Queſtion; and the Plaintiffs, when they received it, never ſo much as inſinuated or pretended, they had any Right to the firſt Inſurance. However, the Plaintiffs have now claimed it, as the taking of the Ship, and carrying her Men away, entirely overſet the Cruize, and ſhe could not be refitted and ſail on another before the Expiration of the Month for which ſhe was inſured; and conſequently

quently this proved an entire Loſs to the Aſſured. But in Support of the contrary, it is alledged by the Defendant, and confirmed by the Opinion of ſeveral very conſiderable Merchants, that this could not be counted a total Loſs, more eſpecially as it is not on a Cruize, the Words of the Policy being, *to be inſured loſt or not loſt, to any Ports or Places for one Calendar Month*, but no Mention at all made of any Cruize; on which Account the Defendant ſuppoſes there could be no Interruption to a Thing never guarded againſt; and beſides, the Ship was ſo far from being a total Loſs to the Owners on the firſt Riſk, that ſhe afterwards met with very great Succeſs by taking a very rich Prize.

And if this Doctrine offered by the Plaintiffs had taken Place with Reſpect to Inſurances made for a Time, every Collier might bring this as a Plea, as they are always inſured on theſe Terms, though it was never apprehended, that every little Accident which happened within the Time, and obliged them to refit, was deemed a total Loſs.

The Plaintiffs were nonſuited, becauſe unprepared to ſhew the Impoſſibility of her being fitted out again before the Expiration of the Inſurance. *Lex Mercat. rediv.* 270. *Trin.* 1749. At *Guildhall*, *Jalabert* and *Nevil* againſt *Collier*.

40. The Plaintiff cauſed Inſurance to be made for himſelf or others, *loſt or not loſt*, on the good Ship *L'Heureux*, Captain *Beatrix*, from *Bayonne* to *Martinico* and Cape *Francois* in *St. Domingo*, with Liberty to touch and ſtay at any Ports or Places whatſoever, without Prejudice to the Inſurers, and without other Proof of Intereſt, in caſe of Loſs, than the preſent Policy, and the *French* and *American* Livres, to be valued at Eleven Pence each, without further Account to be given; and for this the Aſſured paid 30 Guineas *per cent.* to have 12 Guineas *per cent.* returned, in caſe the Ship ſhould depart with Convoy from *Bayonne* or *L'Iſle d' Aix*.

They ſailed two Days after in Proſecution of the aforeſaid Voyage, and was taken, brought to *London*, and condemned; of which the Aſſured demanded of the Defendant his Subſcription, which he refuſed to pay for different Reaſons, as hereafter mentioned.

Several Merchants in *France*, particularly as *Bourdeaux* and *Bayonne*, after the Commencement of the late *French* War, fitted out a great Number of Ships under Pretence and Appearance of ſending them to the *French* Settlements in *America*, *&c.* and got them inſured to their full Value at *Marſeilles*, and other Places in that Country; and as the Laws of *France* prohibit every Perſon from making larger Inſurance that what their Intereſt is, they, without diſcovering what they had done in their Country, requeſted ſeveral Gentlemen here to get Inſurances made for them, often to three or four Times more than their real Intereſt was: And the ſaid Ships being generally taken or loſt, the Underwriters, without ſuſpecting any Fraud, paid their Subſcriptions, by which Means the *French* concerned in theſe Practices, got more than they could have done by any fair Adventures.

Theſe Sorts of Tranſactions became at laſt ſo notorious in *France*, that Monſ. the Count *de Maurepas*, Director of the Marine in that Country, about *May* 1747, took Notice of it, and ſent a Letter to a Merchant at *Nantes*, deſiring him to enquire of his Correſpondent in *England* into the Valuations of the ſeveral Ships and Cargoes mentioned in the Letter (and amongſt them of the *Heureux*, Captain *Beatrix* before mentioned) with the Amount of the Inſurances made thereon, declaring in the ſaid Letter, that there were great Frauds committed by Perſons of *Bayonne* and *Bourdeaux*, in fitting out Ships, and making large Inſurances thereon, and then putting theſe Ships in the Way of being taken by the *Engliſh*. This Gentleman ſent a Copy of the above mentioned Letter to Mr. *Henry Loubier*, a Merchant of this City, who generouſly communicated the ſame to ſeveral of the principal Underwriters; and they, in Conſequence of

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this Advice, chose a few Gentlemen some among themselves, as a Committee to enquire into these Frauds: And they found that several Gentlemen in *England* had procurred Insurances to be made on *French* Ships from *Bourdeaux* and *Bayonne* to the *West-Indies*, either upon the Terms of *Interest or no Interest*, or *without further Proof of Interest than the Policy*, to the Amount of 100,000 *l.* of which near the Half was disputable Losses, by there being great Reason to believe that these Insurances were fraudulent, and, among others, the Ship in Question; upon which a Bill in Chancery was filed, and an Injunction obtained; but, on the Plaintiff's swearing he knew of no Fraud, the Injunction was dissolved.

The Committee sent an Answer to Mr. *Maurepas*'s Letter, authenticated by a Notary Public; whereby it appeared that the Ship and Cargo in Dispute were sold in *England* for 788 *l.* 11 *s.* 3 *d. viz.* the Cargo for 388 *l.* 11 *s.* 3 *d.* and the Ship for 400 *l.* And there was insured on her in *England* 2790 *l.* and at *Marseilles* it was found upon Inquiry, that 12000 Livres had been insured; which, reckoning a Livre at 11 *d.* amounts to 550 *l.*

The preceding Circumstances were offered to the Court, in order to discharge the Defendant from paying the Insurance; but it not being in his Power to prove them, though he supposed them Matters of Fact, and it appearing plainly that the Plaintiff had not in the least been guilty of any Fraud, and the Policy being expresly valued, and that in Case of Loss, the Assured should not be obliged to prove his Interest by any other Means whatsoever save by the present Policy (as is mentioned at the Beginning of this Case) and had paid a Premium adequate to the Risk, which to the Underwriters was rather less than would have been on an Interest to be proved; as in this latter Case they are liable to Averages, whereas on Policies like this in Question, of Interest or no Interest, they are solely answerable for a total Loss; and the Jury found a Verdict for the Plaintiff.

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The ſame was tried on three other Ships under the ſame Circumſtances (on which large Sums had been inſured) and had the ſame Determinations. *Lex Mercat. red.* 271. *Da Coſta* v. *Pauchon.*

41. The Plaintiff having underwrote the *William and Anne*, Captain *Strachan*, at and from *Virginia* or *Maryland* to *London*, had a Mind to re-inſure himſelf, and accordingly ordered Mr. *Alexander Hoſkins*, a Broker, to get it done; who having complied with the Commiſſion, certified on the Policy, that the Intereſt was in the Plaintiff.

The Inſurance was made, *Intereſt or no Intereſt*, free of Average and without Benefit of Salvage, but under the Policy was this Clauſe, *In caſe of Retain, the Aſſurers to have Benefit of Salvage, and to have Average, the ſame as if wrote on Intereſt.*

The Ship ſailed from *Virginia* on her Voyage to *London*, and being about 215 Leagues to the Weſtward of Cape *Clear*, after a Voyage of three Weeks, ſhe was taken by two *French* Privateers, and carried into a Place in *Newfoundland* called by that Nation *Cape de Grate*, and commonly occupied by them in the fiſhing Seaſon, where ſhe continued in the Enemies Poſſeſſion and Power 49 Days; During which Time the Enemy took out of her a great Part of her Cargo, and, after ſo rifling her, and in their Way condemning her, the Captain agreed to ranſom her with what remained of her Loading; and the Ranſom Bill being ſigned, and his Mate left as an Hoſtage, they permitted him to purſue his Voyage to *London*, where he afterwards arrived.

Soon after the Ship's Arrival, the Merchants who were concerned in the Cargo, and had been inſured, applied to their Underwriters for Satisfaction, when moſt of them ſettled the Average for what was pillaged, at 50 *per cent.* one at 40, and the preſent Plaintiff paid his Quota therein, and afterwards applied to the Defendant, who had re-inſured him, to ſettle his Policy; and it was agreed between them, that it ſhould

ſhould be on the ſame Footing as the major Part of the aforeſaid Underwriters on Intereſt had done, which the Broker in this Inſurance underſtanding was done at 50 *per cent.* he indorſed on the Back of the Policy theſe Words, *Adjuſted this Loſs at* 50 *l.* per cent. *to pay in one Month, London,* 12*th December,* 1745, and ſigned by the Defendant, *Daniel Flexney.*

Nevertheleſs at the Time the Defendant ſigned the above-mentioned Note, he told the Plaintiff, that ſome of the Underwriters on the original Policies had paid an Average only of 40 *per cent.* and therefore he would pay no more, and at the ſame Time with his Pen drew a Line through the Word *fifty*, and above it wrote *forty*: which occaſioned ſome Diſpute between them, but the Indorſement ſo ſigned by the Defendant remained uncancelled.

The Defendant afterwards refuſed making any Satisfaction under a Suppoſition of his having no Obligation thereto, for which his principal Reaſons were, *viz.*

1ſt, That although he had ſigned ſuch an Adjuſtment at forty *per cent.* yet he is not bound by it, becauſe the Plaintiff objected to it at the Time of ſigning, and inſiſted on fifty.

2dly, That although the Ship was in the Enemy's Poſſeſſion, and carried into *Cape de Grate*, yet as ſhe afterwards proceeded on the ſame Voyage, and arrived ſafe in *London*, therefore there could be no Loſs, ſo as to recover under a Policy *Intereſt or no Intereſt.*

To the firſt of which Objections, the Plaintiff admits that he did find fault with the Defendant for ſtriking out the Word *fifty*, and inſerting *forty*; yet as the Defendant did not then think proper to cancel the ſaid Adjuſtment, but permitted it to remain on the Back of the Policy, the Plaintiff apprehended he had a Right to recover under the ſaid Adjuſtment.

As to the Defendant's ſecond Objection, the Plaintiff ſuppoſes, that as the Ship was carried in by the Enemy to *Cape de Grate*, and detained till ranſomed, that

that this will amount to a total Diveſtiture or Alteration of the Property, and be deemed ſuch a Loſs as will intitle him to recover, this Caſe ſeems to be of a quite different Nature from a Recapture before the Ship is carried into an Enemy's Port.——Verdict for the Plaintiff. *Lex Merc. Red.* 278. At *Guildhall* after *Eaſt.* 1746. *Hewit* v. *Flexney.*

42. The Plaintiff having cauſed himſelf to be inſured 50 *l. Intereſt or no Intereſt, free of Average, and without Benefit of Salvage,* on the *Proſperous Eſther,* Captain *Miln,* from and immediately following her laſt Arrival at *Maryland* or *Virginia,* and to continue till her Arrival at *London*; and not caring to appear in it, he directed his Broker, Mr. *Hart,* to get the Policy made in his Name, which was accordingly done; and as ſhe was deemed a miſſing Ship, the *Premium* was after the Rate of 60 Guineas *per cent.*

The Ship ſailed on her Voyage from *Virginia,* and in forty Days after was taken by a *French* Privateer, about a hundred Leagues to the Weſtward of the Land's End, and was detained by the Enemy ſix Days at Sea, and then both Ship and Cargo ranſomed for 3500 *l.* but Captain *Miln,* inſtead of coming directly to *London,* whereto he was bound, on Pretence of bad Weather, put into *Ilfracomb* in *Devonſhire,* from whence he wrote to his Owner, Mr. *Dick* of *London*; but the ſaid Gentleman's Affairs being then unhappily ſituated, and having, prior to his Misfortunes, aſſigned this Ship and two Policies of Inſurance thereon to Mr. *Alexander Black*; who apprehending, by what Captain *Miln* wrote, that the Ship and Cargo was much damaged ſince the Capture, and therefore that the Value might fall ſhort of a Sufficiency to pay the Ranſom Bill, and incident Charges, he rather choſe to come upon the Inſurers for his Money, than to have the Trouble of taking the Ship and Cargo under his Care, and therefore abandoned the whole to Captain *Miln,* to enable him to pay the Ranſom Bill.

And

And thereupon Meſſ. *Simonds* of *London* Merchants, Agents for the Captors, ordered Captain *Miln*, to carry the Ship and Cargo to *Briſtol*, there to be diſpoſed of, inſtead of bringing her to *London*; which was accordingly done, and, after paying the Captain and Sailors their Wages, amounting to upwards of 300 *l.* the neat Proceeds fell ſhort of the Ranſom bill, owing to the Damage ſhe received in her Voyage after the Capture.

The Defendant ſuppoſes this was a Gaming Policy, though the Plaintiff inſiſts upon its being a Reinſurance; and having applied to the Defendant, after underwriting, for his Conſent to have it declared ſo, he abſolutely refuſed to admit it.

The Plaintiff ſeemed to lay a good deal of Streſs on a ſuppoſed Indiſcretion in the Captain, by paying more for the Ship and Cargo than they were worth; but had they eſcaped the Damages ſubſequent to the Ranſom, they would undoubtedly have ſold for more than they coſt freeing, and never have been abandoned by the Owners.

The Plaintiff likewiſe inſiſts, that the Ship ſailed from *Virginia*, but never arrived at *London*, according to the Terms of the Policy, and therefore the Inſurance was due; but the Defendant pretends, that the Ship's putting into *Ilfracomb* was a Deviation, and conſequently not within the Riſque of the Policy; and beſides, he thinks this is not to be conſidered as a total Loſs, in the Caſe of *Intereſt or no Intereſt*, as it is a mere Wager, whether the Ship arrives or not; the Ship did arrive in *England*, and is now in being, and this was a Ranſom at Sea, only for the Benefit of the concerned, but the Defendant could reap no Advantage by it, whether it was prudently done or not; and it might occaſionally have been more for his Intereſt, if the Ship had continued at Sea in the Enemy's Poſſeſſion, as there was a Chance of her being retaken before ſhe had been carried *infra præſidia*; and if ſhe had, and arrived ſafe, there would have been no Loſs within the Terms of the Policy; as he

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preſumes there is no Room to claim a Loſs in Caſes of Recapture. Several Merchants, Inſurers and Brokers, being of Opinion that on a Policy *Intereſt or no Intereſt*, a Capture at Sea is never conſidered as a total Loſs, unleſs the Prize is afterwards carried into the Enemy's Port, and that the abandoning the Ship and Cargo by the Owners, after her Arrival, will not alter the Caſe. The Jury found a Verdict for the Plaintiff. *Lex Mercat. Red.* 279. *Trin.* 1747. at *Guildhall*. *Barclay* v. *Etherington*.

43. This Action was brought by the Plaintiff againſt the Defendant, on a Policy of Inſurance which the latter underwrote, ſo long ago as in *November* 1743, on the Ship *George* and *Henry*, Captain *Bowlar*, at and from *Jamaica* to *London*, *Intereſt or no Intereſt*, *free of Average*, *and without Benefit of Salvage to the Inſurers*, with a Warranty annexed to the Policy, *viz. Warranted the ſaid Ship to ſail from* Jamaica *with the Fleet that came out under Convoy of the* Ludlow-Caſtle *Man of War*.

The ſaid Ship did ſail accordingly with the Fleet under the aforeſaid Convoy; but in a great Storm that happened ſome time after their ſailing, wherein many Ships were loſt, the *George* and *Henry* received ſo much Damage as obliged her to bear away for *Charles-town* in *South Carolina*, where ſhe put in, and upon Examination was found quite unfit to put to Sea again; whereupon her Cargo was taken out and loaded aboard other Ships for *London*, and ſhe condemned and broke up.

In Conſequence of which, the Plaintiff demanded his Inſurance, and all the Underwriters being ſatisfied of the Truth of the aforementioned Fact, paid their Loſs, except the Defendant, who went ſo far as to ſettle it, and, according to Cuſtom, underwrote the Policy in the following Words and Figures: *Adjuſted the Loſs on this Policy, at ninety-eight Pounds per Cent.* which I do agree to pay one Month after Date. *London*, 5 *July*, 1745. *Henry Gouldney*.

When this Note became due, he thought himſelf no way bound by it, but inſiſted on fuller Proof; particularly of the Ship's ſailing under Convoy, as warranted, and of her Condemnation at *Carolina*; but it having been always the Cuſtom, that after ſuch Adjuſtments as above, with Promiſe of Payment at a certain Day, are made between the Inſured and Inſurer, no farther Evidence is ever required but the Loſs conſtantly paid; and it was upon this Account that a Verdict was found for the Plaintiff. And the Chief Juſtice conſidering it as a Note of Hand, declared that the Plaintiff had no Occaſion to enter into the Proof of the Loſs. *Lex Mercat. Red.* 280. at *Guildhall*, *Mich.* Term, 1750. *Daubony* v. *Read.*

44. The *Tyger*, Captain *Harriſon*, being bound from *London* to *Gibraltar*, the Plaintiff got an Inſurance made on her, *Intereſt or no Intereſt*, *free of Average and without Benefit of Salvage to the Inſurers*; and at the Foot of the Policy there was a Warranty, *that the Ship ſhould depart with Convoy from ſome Port in the Channel.*

The ſaid Ship proceeded on her Voyage as far as the *Downs*, and ſailed from thence under Convoy, as warranted, but ſoon after her Departure ſhe received a very conſiderable Damage, which obliged her to return to *Dover* Pier to refit; and after the neceſſary Affairs were finiſhed ſhe ſailed again in Proſecution of her Voyage, and for her Security therein, to join the Convoy at *Spithead*; but having got as far as the *Iſle of Wight*, ſhe proved ſo leaky as obliged her to a ſecond Return, and ſhe once more arrived at *Dover* to ſearch for Leaks.

Her Owners, on this, thought it adviſable to have her ſurveyed by Men of Skill and Judgment; and therefore two Ship-Carpenters, and two Maſters of Ships, having examined her, declared that they had ſurveyed both Sides from Stem to Stern above the Wales, and the Tranſom, after the Planks were ripped off, and found the Timbers to be very rotten, and in ſo bad a Condition, that except all her upper

Works

Works were pulled down and new built, they did not judge her in a fit Condition to proceed on her intended Voyage; and that if ſhe was ſo repaired, the Charges would come to more than ſhe would be worth, with all belonging to her.

The Plaintiff inſiſts that ſhe was a very good Ship when ſhe ſet out on her Voyage, and ſhe was only rendered otherwiſe by the bad Weather ſhe had met with, which at laſt not only rendered her unfit for her Voyage, but occaſioned her proving a total Loſs to her Owners; that ſhe would have weathered the Storm in all Probability, unhurt, had not the *Swift* Privateer drove foul of her; that when her firſt Hurt was repaired, the Builder ſuppoſed her ſtronger than before the Storm; though when ſhe was laid open, her Tranſom (as before mentioned) and moſt of her long Timbers were found rotten, ſo that notwithſtanding it is poſſible ſhe might have performed her Voyage, yet had her Defects been known, no Body would have cared to venture in her.

Mr. *Burton*, who fitted her out in the *Thames*, declares ſhe was in very good Condition, and fit for any Voyage; though he did not examine her Timbers, but only caulked her and mended her Outſide and Floor-Timbers; but it is natural to ſuppoſe that if her Timbers were found in *October* (when theſe Repairs were done) they could not have been rotten in *January*, when ſhe received her Damage.

And the Defendant grounds his Reaſons for not paying the ſaid Inſurance, firſt, on that Part of the Policy's Contents which aſſerts the Ship to be *tight, ſtaunch, and ſtrong*, and (barring future Accidents) able to go through the Voyage; whereas he ſuppoſes this Veſſel not to have been ſo, as he thinks it clear from the preceding Affidavit, and from the verbal Evidence of one of the Surveyors; to which he adds, in order to make the Proof of her Defects the ſtronger, that on her firſt ſetting out ſhe belonged to two *Jews*, who on her return to *Dover* Pier the firſt Time, ſold her to Mr. *Richard Glover*, a conſiderable Merchant of this

this City, who ordered her to be repaired, and actually laid out upon her 150*l.* which, as it appears, was in a Manner thrown away, as on her ſecond return ſhe was condemned, broke up, and ſold in Parcels; and her Incapacity to proceed on her Voyage having been ſo apparent, from the foregoing Survey, as to induce Mr. *Glover* to deſire the Shippers to take their Goods out, and though he had got 300*l.* inſured on her, he ſeemed ſo ſenſible of the deceitful Bargain with the *Jews*, in ſelling him an old rotten Ship, that he never demanded one Farthing of the ſaid Inſurance from the Underwriters.

That the Plaintiff had no Intereſt in the Veſſel, and therefore this was only a gaming Policy; and as it is a general Rule in all Caſes of *Intereſt or no Intereſt*, that there muſt be a total Loſs before the Inſurer can recover, and the Inſurer by this Policy, being free from Average, or a partial Loſs, it ſeems to be the principal Queſtion in this Caſe, whether the Ship brought into *Dover* Pier, there condemned as rotten, divided into Lots and ſold, will be conſidered in the Agreement or Wager, as a total Loſs? And to enforce the contrary, the Defendant remarks, that there was no Loſs at Sea, no Capture, but a deliberate Act done by the Owner, upon a regular Survey, which occaſioned her being broke up, not by Reaſon of the Damage ſhe had received, but from the Rottenneſs of the principal Parts of her Works. Verdict for the Plaintiff. *Lex Mercat. Red.* 281. At *Guildhall*, *Trin.* 1747. *Arnold* v. *Godin.*

45. The Plaintiffs having received Orders from Mr. *John Jones* of *Boſton* in *New England*, to make ſome Inſurance for him on the *Repriſal*, Captain *Gowan*, and alſo on her Goods and Freight at and from *Cape Fear*, in *North Carolina*, to *Briſtol*; underneath the Policy for the Ship only, was inſerted the ſubſequent Words or Declaration, *viz. The following Inſurance is on the Ship only, valued at the Sum inſured*, on which Part the Defendant underwrote 100*l.*

The Ship ſailed from *Cape Fear*, with a Cargo of Pitch, Tar, *&c.* in Proſecution of her Voyage for *Briſtol*, and had got within an hundred and fifty Leagues to the Weſtward of *Cape Clear* in *Ireland*, when ſhe was attacked and taken by three *French* Ships, bound for *Newfoundland*, where they carried her and her Cargo to a *French* Port called *Carpoon*, after having firſt taken out all her Men, and diſperſed them aboard their own Ships.

On their Arrival at the aforeſaid Port, the Captors took out all her Pitch (being two hundred and three Barrels) ſome Tar, what Rice was aboard, *&c.* and after detaining her about three or four Weeks in the ſaid Port, the Captors offered Captain *Gowan* his Ship and remaining Cargo for 9500 Livres (about 425*l.* Sterling) which he accepted and became the Purchaſer thereof on thoſe Terms, leaving his Son as an Hoſtage for the Payment of the Ranſom.

The Ship departed from *Carpoon* for *Briſtol*, and on her Voyage met with very bad Weather, which broke her Rudder, and was forced to put into *Appledore* in *Devonſhire* (the firſt Port they could make with Safety) where the Captain, firſt and ſecond Mates, Boatſwain, and a Foremaſt-Man, made a Proteſt on their Oaths, giving ſuch an Account as the preceding.

The Captain having purchaſed the Ship and Cargo, as before mentioned, on his Arrival at *Appledore*, applied to Mr. *Perkins* of *Briſtol*, to whom he was conſigned by *Jones* the Owner, who refuſed to pay the Ranſom-Money, or have any thing to do with the Ship or Cargo, and then the Captain came to *London* to the Inſurers; and thoſe who inſured on the Goods impowered and deſired him to ſell the Cargo for what he could, in order that if it produced more than the Ranſom, they might have the Benefit; but the Inſurers on the Ship would not intermeddle, or give any Directions about it.

The Captain returned to the Ship, and ſold that and the Cargo jointly, for above 100*l.* leſs than the Redemption-

Redemption-money, after deducting Charges, and he has been obliged to pay, or give Security for the Remainder to procure his Son's Liberty.

The Ship being thus taken and carried into an Enemy's Port, where she was detained a considerable Time, and had great Part of her Cargo taken out by the Captors, and afterwards meeting with other Misfortunes which occasioned her producing less than the Ransom-money, and consequently to prove a total Loss, to be made good by the Insurer.

The preceding is a State of the Case, and of the Plaintiff's Demands, who think themselves entitled to a total Loss, as the Policy was valued; but the Defendant on the contrary pretends, that as Part both of the Ship and Goods were saved, he is entitled to an Average, and not subject to an entire Loss; but the Jury found a Verdict for the Plaintiff. *Lex Mercat. Red.* 282. At *Guildhall*, *Hill.* 1745. *Lane* and *Caswall* v. *Collyer*.

46. The Plaintiff made an Insurance in *London* on the *Tryal* Privateer, fitted out at *Bristol* for two Calendar Months, wherever the Ship might then be, on a Cruize, or in any Port or Place whatsoever or wheresoever, the said Ship to be valued at *Interest or no Interest, free of Average, and without Benefit of Salvage.*

The said Privateer being fitted for her Cruize, sailed from *Bristol* on the 29th of *May* 1746, and some Days after she was met by a *French* Privateer of a superior Force, who attacked, and, after a brave Defence, took her.

She had been in the Enemy's Hands about eight Hours, without their removing any of her Men or Stores, when Admiral *Martin* with his whole Fleet appearing, retook the *Tryal*; and hearing of the gallant Behaviour both of the Captain and his Crew, they unanimously agreed to give up their Salvage to them, and accordingly drew up and signed an Instrument to that Purpose; and the Admiral ordered her to be furnished with all Necessaries, and sent a Man

of War Sloop to ſee her ſafe into *Briſtol*, where ſhe arrived the latter End of *June*, being between three and four Weeks before the Inſurance expired.

Theſe Circumſtances the Plaintiff thinks entitles him to a total Loſs, as the Voyage was overſet, and the Policy being on *Intereſt or not*, will admit of no Average.

The Defendant agrees to the laſt Aſſertion, but for that very Reaſon inſiſts he has no Loſs to pay, as he is free from a partial one, and there can be no total one, where the Ship is arrived, and, as he inſiſts, might have been fitted out again, before the limited Term of two Months expired, had the Owners not determined the contrary; and beſides, though the Ship was taken, yet as ſhe was never carried *infra præſidia* of the Enemy, or was ſo taken as to be beyond a Poſſibility of a Recapture; and hath returned to *Briſtol*, ſo long Time before the two Months expired, as was ſufficient to refit her in, the Defendant ſuppoſes that the Neglect of the Owner ought not to be imputed to the Underwriters, more eſpecially as ſeveral Ship-Builders attended to prove there was Time enough, as ſeveral Merchants did to give their Opinion in regard to the Loſs. Verdict for the Plaintiff. *Lex Mercat. Red.* 283. At *Guildhall*, *Mich.* Term, 1749. *Jenkins* v. *Mackenzie*.

47. The Plaintiff was Owner of the Ship *Love and Unity*, which he let out to Freight to one *Bateman Humphreys*, for a Voyage to *Liſbon* and back again, and the Freighter was by Charter-Party obliged to victual and man her, which he did accordingly, putting in the Maſter and Crew, and embarking himſelf, proceeded on his Voyage, and arrived ſafe at *Liſbon*; he delivered the outward-bound Cargo, and put the Ship up for *London*, in hopes of getting a Freight home; on Advice of which the Owner and Plaintiff got her inſured, *at and from* Liſbon *to* Graveſend, *warranted to ſail with Convoy*.

The Freighter being at *Liſbon*, meditated a Fraud, which iniquitous Scheme he perpetrated in the following

lowing Manner, *viz.* he made up Rolls of Lead about the Size of Moidores, Six and Thirties and Three Pound Twelves, packed up and ſealed as ſuch Monies are uſually packed up and ſealed, and made Packages likewiſe in Imitation of thoſe of Diamonds, and ſent them on board, and took Bills of Loading from the Captain as for real Money and Diamonds, ſent thoſe Bills of Loading home to different Merchants, and drew conſiderable Sums upon the Credit of them, as well as large Inſurances, in order, as it is ſuppoſed, to have loſt the Ship in the Voyage home, and make the Inſurers pay as though ſuch Effects had actually been on board; but the Captain, as it is imagined, ſuſpecting ſomething of the Fraud before the Ship ſailed, opened one or more of the Packages, and diſcovered the Cheat, finding nothing but Lead and Glaſs, inſtead of Gold and Diamonds, of which he giving Information to the *Engliſh* Conſul there, the Freighter run away, and the Captain and Crew left the Ship, the Captain coming to *England*.

The Plaintiff on knowing what had occurred, by the Maſter's Arrival, immediately applied to the Inſurers, and deſired them to ſend to *Liſbon* for the Ship, or furniſh him with Money to go and fetch her; but they were of Opinion, and accordingly told him ſo, that as the Ship was at the Port ſhe was inſured from, and had proceeded on her Voyage, it was the Buſineſs of the Owner, not the Inſurers, to find Maſter and Mariners to navigate her; the Conſequence of which was that the Ship lay there neglected till ſhe was broke to Pieces, whereupon the Plaintiff brought this Action for the Recovery of a total Loſs.

The Defendant thinks himſelf not obliged, as he preſumes the Words in the Policy *at and from*, can only mean to give the Ship leave to ſtay at the Port a reaſonable Time to procure a Lading and take it in, and not to lie there till ſhe rots, without attempting the Voyage, as this would be to make the Inſurer at all Events liable, ſooner or later, whereas he

ſuppoſed he undertook a Riſque of two or three Months only. Verdict for the Plaintiff. *Lex Mercat. Red.* 284. At *Guildhall*, *Hill.* 1747. *Boutflower* v. *Wilmer*.

48. If Goods be lawfully inſured, and afterwards the Veſſel is diſabled, by reaſon of which, with the Conſent of the Merchant, they are put into another Ship, which, after Arrival, proves an Enemy's Ship, and by reaſon thereof is ſubject to Seizure; in this Caſe the Inſurers ſhall anſwer, for that is ſuch an Accident as is within the Intention of the Policy of Inſurance, where the Policy mentions againſt Dangers of the Sea, Enemies, *&c.* as Policies generally do. *Vin. Ab. Tit.* Policy of Aſſurance, 17. cites *Gen. Treat. of Trade*, 76.

49. If by Lightening the Goods which are put into the Boat or Lighter, periſh, the Ship and remaining Goods in the Ship ſhall anſwer for the ſame. But on the contrary, if the Ship and remaining Goods periſh after the Boat or Lighter is once ſafe, no Contribution ſhall be on the Goods in the Lighter; for the Law is that the Goods ſhall only be liable to Contributions when Ship and Goods are ſafely arrived at their intended Port of Diſcharge. According to this Rule the Aſſurer is to anſwer for Contribution *pro rata* of the Sum by him aſſured. *Malynes's Lex Mercat.* 117.

50. As to an Aſſurer's being liable to the Adventure of Goods ſhipped from one Ship into another; ſometimes in Policies of Aſſurance it happens, that upon ſome ſpecial Conſideration this Clauſe forbidding the transferring of Goods is inſerted; becauſe in Time of Hoſtility or Wars between Princes, it might fall out to be unladen in the Ships of thoſe contending Princes, whereby the Adventure would be far more hazardous. But according to the uſual Aſſurances, which are made generally without any Exception, the Aſſurer is liable thereto; for it is underſtood that the Maſter of a Ship without ſome good and accidental Cauſe would not put the Goods

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from one Ship to another, but would deliver them (according to the Charter-party) at the appointed Place, which is the Cauſe that when Aſſurance is made upon ſome particular Goods laden in ſuch a Ship, under ſuch a Mark, the Policy maketh mention of the Goods laden to be tranſported and delivered to ſuch a Place by the Ship, *or by any other Ship or Veſſel*, until they be ſafely landed. So that in all theſe and the like the Condition makes the Law. *Mal. Lex. Mercat.* 118.

51. If Goods are inſured upon ſuch a Ship, and afterwards in the Voyage it happens ſhe becomes leaky or receives other Damages, and the Supercargo and Maſter agree to freight another Veſſel for the ſafe Delivery of the Goods; and then after her relading, the ſecond Veſſel is loſt, the Aſſurers are diſcharged: But if there be theſe Words, *the Goods laden to be tranſported and delivered at ſuch a Place by the ſaid Ship, or by any other Ship or Veſſel until they be ſafely landed*, then the Inſurers muſt anſwer the Misfortune. *Molloy*, B. 2. C. 7. §. 11. cites *Leg. ult. ad Rhod. Digeſt. Paulus, Lib.* 14. *Tit.* 2. §. 10.

52 If an Inſurance be made on a Ship generally, and the Name of the Ship is expreſſed, according to the ſaid Policy of Aſſurance made upon the very Keel of the Ship of ſuch a Burthen, this Aſſurance does not extend to the Goods laden in the ſame, when the Ship is only named and no Goods at all. *Mal. Lex. Mer.* 116.

53. A Ship is inſured for more than ſhe is worth, the Money may be recovered on any Loſs happening, where the Policy of Aſſurance is well made, and it is declared therein that the Owner did value his Ship in ſuch a Sum: And where a Merchant valued one Barrel of Saffron at 1000*l.* having privately put ſo much in Gold in the ſame, the Gold was taken, but the Saffron was delivered; here the Aſſurers were obliged to pay for the Gold. The like is to be done for Pearls or other Things ſo valued. *Gen. Treat. of Trade*, 74.

54. A Policy of Aſſurance was drawn from *Arch-Angel* to *Leghorn*, and *aſſumpſit* being brought upon it, the Defendant ſaid, that the Agreement before the Subſcription was, that the Adventure ſhould begin but from the *Downs*; but this Agreement was not put into Writing. This being but a mere parol Agreement, may be altered or diſcharged by Agreement by Parol; but without it be put into Writing, *it ſhall be taken that the Policy ſpeaks the Minds of the Parties*; for Policies are Things well known, and go as far as Trade goes; and to ſuffer them to be defeated by Agreements not appearing, is to leſſen their Credit, and to make them of no Value, which yet are countenanced by two ſeveral Acts of Parliament. That the Party may as well ſay, he is to have ten Guineas Premium, though the Policy ſays but three, as to ſay he inſured but from ſuch a Place, *viz.* the *Downs*, when the Policy ſays it was from *Archangel*. *Pemberton* ſaid that Policies were *ſacred Things*, and that a Merchant ſhould no more be allowed to go from what he had ſubſcribed in them, than he that ſubſcribes a Bill of Exchange payable at ſuch a Day, ſhall be allowed to go from it, and ſay it was agreed to be upon a Condition, *&c.* when it may be that the Bill had been negotiated; for though neither of them are Specialties, yet they are of great Credit, and very much for the Support, Conveniency and Advantage of Trade. *Skin.* 54, 55. *Trin.* 34 *Car.* 2. *B. R. Kains* v. Sir *Knightly*.

55. If a Ship was laden at *Aleppo* and comes to *Meſſina*, that ſhe may be inſured, the Adventure is to begin from *Meſſina*; but then it muſt be expreſſed: nay it need not be expreſſed that ſhe was laden at *Aleppo* (though the Opinion of ſome Merchants was ſo) as *Pemberton*, Chief Juſtice, ſaid; but if the Inſurance was of Goods laden at *Aleppo*, and they were indeed laden at *Meſſina*, it might make a Difference. *Skin.* 54. *Trin.* 34 *Car.* 2. In Caſe of *Kames* v. Sir *Robert Knightly*, ſays this was allowed.

56. If

56. If the Policy of Aſſurance run *until the Ship ſhall have ended and be diſcharged of her Voyage.* Arrival at the Port to which ſhe is bound is not a Diſcharge until ſhe is unloaded. *Per totam Cur.* upon a Demurrer. *Skin.* 243. *Mich.* 1 *Jac.* 2. *B. R. Anon.*

57. If a Ship be inſured under Captain *J. S.* the Part-owners may change the Captain without Notice to the Inſurers. *Quære tamen*; for it might be the Confidence and Knowledge of the Captain might be an Encouragement to the Inſurers. *Per Holt.* 12 *Mod.* 325. *Anon.*

58. In the Caſe of an Inſurance *loſt or not loſt*, in the Year 1583, there was a rich Ship, called the *St. Peter*, coming from the *Eaſt Indies* for *Liſbon*, miſſing a long Time, and Inſurance was made upon her at *Antwerp* and other Places at thirty *per Cent.* Within three Years after there arrived at *Liſbon* a ſmaller Ship very richly laden, which was made out of the other Ship, which was caſt aſhore on a certain Iſland abroad; and thereupon divers Controverſies did ariſe between the Owners of the Goods and the Aſſurers, as alſo the Maſter and Mariners. At laſt it was adjudged by the Sea Laws, that the Maſter and Mariners ſhould have one third Part, and the Aſſurers ſhould come in for ſo much *pro rata* as they had aſſured, all Charges deducted, and the Ship to belong to the Owners of the former Ship; with the like Conſiderations as aforeſaid. *Vin. Ab. Tit. Policy of Aſſurance*, 42. cites *Gen. Treat. of Trade*, 72. *Mal. Lex. Mercat.* 106, 108.

59. A *London* Merchant cauſed a Ship at *Calais* to be freighted for *Liſbon*, and to return back again to *Calais* or *London*; and the Ship going to *Liſbon* was there laden with Sugar, Pepper, and other Commodies to come for *London*; whereupon the Merchant cauſed 6000 *French* Crowns to be inſured on her at *Roan*; and it happened that the Ship was caſt away upon the Coaſt of *France* in coming homewards, and all the Goods were loſt; and Intimation of this was made to the Aſſurers, and all the Proof concerning the Lading of the ſaid Ship was ſent to

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the Commiſſioners of Aſſurance at *Roan:* But upon examining the Bills of Lading which declared truly the Quality and Quantity of the Goods, the Merchant's Factor at *Liſbon* (conſidering it was a dangerous Time of War, and the Merchant living in *London*) left the Place of the Ship's Diſcharge *in Blank*, and by Letters over Land gave him Notice of it, which was made apparent. Here, after the Examination of the Sea Laws and Cuſtoms, and conſulting experienced Merchants, it was determined that the Inſurers ſhould be diſcharged, and make only a Reſtitution of the Money received by them for the Premium, out of which they abated 10*s.* for every 100 *l.* for their ſubſcribing to the Policy of Inſurance. *Gen. Treat. of Trade*, 72, 73, cites *Lex Mercat.* 112. The Caſe of *Gerard Malynes* Merchant.

60. Upon a ſpecial Verdict the Caſe in Subſtance appeared to be this: *Aſſievedo* had inſured ſo much Money upon a Ship called the *Ruth* for ſuch a Voyage, in which Ship *Aſſievedo* is found by the Verdict not to be at all concerned in Point of Intereſt. It happened that this Ship was taken by the Enemy, and kept in their Poſſeſſion for nine Days, and then, before it was carried *infra præſidia*, *viz.* a Place of Safety, it was retaken by an *Engliſh* Man of War: And whether or no this was ſuch a Taking, as ſhould enable the Plaintiff to recover the Sum inſured againſt *Cambridge*, was the Queſtion.

It was argued by Dr. *Floyer* for the Plaintiff, and Dr. *Henchman* for the Defendant.

The Subſtance of the Argument for the Plaintiff was, that this was rather to be eſteemed a Wager than an Inſurance: a *Spei emptio & venditio*, and not a *Verſio periculi*, which, in the Books of the Civil Law, is looked upon as a proper Definition of an Inſurance: That therefore whatever Acts of Parliament are made about Inſurances, muſt be underſtood of proper Inſurances, and not Inſurances of the Goods of Strangers: That whether or no this is ſuch a Taking as will diveſt the Property out of the Owners,

is a Queſtion properly between them and the Retakers. But the Queſtion between *Aſſievedo* and *Cambridge*, is only whether the Ship be taken.

This Caſe was compared to a Man laying a Wager that he ſhould not be robbed in going to ſuch a Place; he is robbed, but, taking ſome Perſons along with him, purſues the Robber, and recovers what he loſt: Here, though the Money is recovered, yet the Wager is loſt.

So if the Wager had been, that ſuch Perſons ſhould not be married together; they are married, and afterwards divorced *præcontractus cauſa*; yet the Wager is loſt.

It was ſaid further, that, without this Expoſition, *Cambridge* would have two Chances, *viz.* that it is not taken, or that it is retaken; but *Aſſievedo* would have but one, *viz.* the taking.

Grotius, in his Treatiſe *de jure belli & pacis*, Lib. 3. Cap. 6. Sect. 3. lays this down as a Rule, *Placuit gentibus, ut is cepiſſe rem intelligatur, qui ita detinet ut recuperandi ſpem probabilem alter amiſerit.* Now, in our Caſe, the Ship was for nine Days in the Poſſeſſion of the Enemy.

By the Laws of *Spain* and *France*, a Continuance in the Poſſeſſion of the Enemy for twenty four Hours is an Alteration of the Property; and *Albericus Gentilis* tells us, that a *Pernoctation* with the Enemy would, by our old *Engliſh* Law, alter the Property. And *Grotius*, immediately after the Place before mentioned, ſays, that *recentiori jure gentium inter Europæos populos introductum videmus, ut talia capta cenſeantur, ubi per horas viginti quatuor in poteſtate hoſtium fuerint.*

For the Defendant it was argued, that ſurely the Law would not put an Inſurer *non bona fide*, or a Wager, in a better Condition than one that inſured *bona fide*, and ſay that any thing ſhall enable a Wagerer to recover; but that no Taking, but ſuch as alters the Property, ſhall enable a real *bona fide* Inſurer to recover.

This Queſtion in the Court of Admiralty would not have borne a Diſpute; for the Law is clear, that

not

not Length of Time, but the bringing *infra præſidia* into a Place of Safety is that which diveſts the Property. And for that the Caſe of ——— and *Sands* in the late War was cited; where the Ship was taken by *Dubart* in the Year 1691 off of *Yarmouth*, carried to *Northbergen*, then ſold to *A.* afterwards ſold to *B.* *B.* ſends her to the *Weſt-Indies*, afterwards to *France*, and in the Year 1695 to *England*; where ſhe being retaken, it was reſolved that the Property was not altered. The Words of the Judgment in this, and the like Caſes, are very remarkable: *in præſenti pertinere* is Part of the Sentence; ſo that the Sentence does not give a new Right, but confirms an old one.

In the Civil Law Alteration of Property is a Thing of an odious Nature; and therefore the Law even by a Fiction prevents it, as in the *Jus Poſtliminium*; where, in order to preſerve Property in the Perſon returning *Jure Poſtliminii*, the Law eſteems him never to have been a Captive, that ſo *manente cive maneant ſua bona.*

Lud. Molin. de Juſtitia, in diſputatione 118. *Prioribus Dominis reſtituenda quæ capta fuerint a militibus, quibus numerantur ſtipendia. Bella res per vim uſurpantur, quando ad locum tutum, &c.*

Petrinus Bellus, Pat. 3. *No.* 11. *de Poſtliminii Jure reverſis. Inſuper ſciendum, hoſtibus capta non ſtatim hoſtium fieri. Milites dicunt*, that Things ſo long in the Poſſeſſion of the Enemy *eorum fieri: Jura hoc non dicunt, cum fieri poteſt* that the Property may be altered by the Poſſeſſion of a ſhorter Time, *& forſan* not altered *diuturniori poſſeſſione.*

Conſulat. del mare, Cap. 287. A Book of great Authority lays down the Security of the Place into which *deducuntur capta*, as that which cauſes the Alteration of Property: Otherwiſe, after a proper Reward for the Retakers, *prioribus, &c.*

Albericus Gentilis, in the Place quoted by the Advocate for the Plaintiff, has for his Title theſe Words: *Rem non fieri hoſtis ante deductionem infra præſidia*; and

and his Determination is purſuant to his Title, and expreſsly againſt what the Doctor quoted.

Grotius, Lib. 3. Cap. 9. Sect. 16. Eæ vero res, quæ infra præſidia perductæ nondum ſunt, quanquam ab hoſtibus occupatæ, ideo poſtliminii non egent, quia dominum nondum mutârunt ex gentium Jure.

As for the Quotation out of *Grotius, Recentiori jure, &c. Grotius* builds there upon a miſtaken Foundation; for he quotes *Albericus Gentilis, Lib.* 3. and there is no third Book. Indeed in *Cap.* 3. *Lib.* 1. there is ſomething like it; *Grotius* quoted there Part of an Argument without conſidering the Concluſion, which is directly againſt his Quotation: *Perductionem omnino deſiderant omnia*, ſays the Book.

The Court ſeemed to be of Opinion for the Defendant. They thought, that the Plaintiff's being found by the Verdict to have no Intereſt in the Ship which he inſured, ſhould make no Difference.

1ſt, Becauſe they would never be more favourable to an Inſurer *non bona fide*, or Wagerer, than to one that inſured *bona fide*.

2dly, Becauſe to make a different Interpretation of this Deed from what is commonly put upon Policies of Inſurance, would be to run counter to the Deſign of the Parties, who have made uſe of the very ſame Words that are uſed in ſuch Policies; nay, who have expreſsly provided for this very Caſe by the Words, *Intereſt or no Intereſt*; which Words ſignify nothing at all, unleſs the ſame Loſs intitles to a Recovery where the Inſurer has no Intereſt, and where he has; and that the Property is not altered by the *taking*, they held to be very plain.—To be argued next Term by common Lawyers. *Luc.* 77. *Hill.* 10 *Anne, B. R. Aſſievedo* v. *Cambridge.*

61. *Aſſumpſit* upon a Policy of Inſurance, where the Defendant inſured the Plaintiff, *Intereſt or no Intereſt*, againſt all Enemies, Pirates, Takings at Sea, and all other Damages whatſoever. And upon Trial it appeared, that the ſhip was taken by a Pirate of *Sweden*, and was in his Poſſeſſion for nine Days, and then

then was retaken by an *Engliſh* Man of War, and, after the Suit commenced, brought into *Harwich*. And the Queſtion was, whether in ſuch Caſe the Defendant was reſponſible?

And it was reſerved by the Chief Juſtice for the Opinion of the Court; and after Argument by Serjeant *Whitaker* for the Plaintiff, and by Dr. *Henchman* for the Defendant, it was determined for the Plaintiff.

For though it was objected that the Inſurer was only reſponſible where the Plaintiff had a Property, and that the Term of inſuring *Intereſt or no Intereſt* was introduced ſince the Revolution; yet it was ſaid that ſuch Inſurance was good, and the Import of it is, that the Plaintiff has no Occaſion to prove his Intereſt, and that the Defendant cannot controvert that.

And though the Ship was here retaken, yet the Plaintiff received a Damage, for his Voyage was interrupted; and the Queſtion is not, whether the Plaintiff had his Ship, and did not loſe his Property; but what Damage he ſuſtained. *Comyns* 360. *Mich.* 7 *Geo.* 1. *Depaba* v. *Ludlow*.

62. Upon a ſpecial Verdict in an Action brought on a Policy of Inſurance, and the general Iſſue of *non aſſumpſit* pleaded, it appeared that a Defendant had underwrote the Policy in queſtion, as an Inſurer upon a Ship called the *Salamander*, being a Privateer Ship for a coaſting Voyage for three Months. It appeared that this Ship was taken by a *French* Man of War, but was afterwards retaken, and upon Payment of proper Salvage, was reſtored to the Owners.—The Breach aſſigned in the Declaration was on the Capture within the three Months; and the general Queſtion appeared to be, Whether the Plaintiff could be intitled to Judgment upon ſuch a Caſe? *Lee* Chief Juſtice ſaid, that though this ſpecial Verdict was found with a View to determine, whether there was any Change or Alteration in the Property of the Ship, yet the Court were all of Opinion, that they ought not to determine the Merits of this Caſe by that

Queſtion,

Queſtion, but upon the Policy itſelf, as the Contract of the Parties, and upon the Intention of the Parties appearing therein. For though, by the Civil Law, there muſt be a Loſs of Property to intitle a Perſon inſured to recover againſt the Inſurer; yet that is not ſo in our Law, which judges upon the Contract itſelf, and the Intention of the Parties appearing therein. He cited a Caſe of *Depaba* and *Ludlow*, *Comyns*, 360. (the preceding Caſe) as one in Point, but ſaid he had a Manuſcript Note of the Caſe, and the Judgment of the Court, by which it appears that that Caſe is but imperfectly reported in *Comyns*:——That the Court were all of Opinion the Plaintiff had aſſigned a Breach, upon which he is intitled to recover. For though the Loſs in this Caſe is ſuch as does not intirely deprive the Inſured of the Ship, yet he has ſuſtained a Loſs by the Capture and Detention of the Ship; which is within that Part of the Policy which inſures againſt all Captures and Detentions.——And to ſhew that it is not neceſſary there ſhould be an intire Loſs to intitle the Plaintiff to recover, he cited the Caſe of *Bond* and *Gonſales*. 2 *Salk*. 445. and another Caſe in *Salk*. 444. Judgment for the Plaintiff. *N. B.* The Inſurance was *Intereſt or no Intereſt*, but no Weight was laid upon this in giving the Judgment of the Court. *Dict. Tr. and Com. Pond* v. *King*. 21 *Geo*. 2. This Caſe is more fully reported in the following Paragraph.

63. The Plaintiff, being concerned in the *Salamander* Privateer, made Inſurance on her, as well in his own Name, as for and in the Name and Names of all and every other Perſon or Perſons, to whom the ſame did, might, or ſhould appertain, in Part or in all, or loſt and not loſt, and at from the *Downs* or elſewhere to any Ports or Places whatſoever, for and during the Space of three Calendar Months, to commence from the 21ſt *December* 1744, upon the Body, Tackle, *&c.* of the ſaid Ship; and to continue until the ſaid Ship, with her Tackle, *&c.* ſhould be arrived at, as above-mentioned, and there had moored

at

at Anchor 24 Hours in good Safety; and it ſhould be lawful for the ſaid Ship in that Voyage to proceed and ſail to, and touch, and ſtay at, any Ports or Places whatſoever, without Prejudice to that Inſurance; the ſaid Ship, *&c.* for ſo much as concerned the Aſſured, was and ſhould be valued at *Intereſt, or no Intereſt, free of Average, and without Benefit of Salvage to the Aſſurers.* Touching the Adventure, *&c.* which they the Aſſurers were contented to bear, and did take upon them in that Voyage, *&c.* and in Caſe the ſaid Ship ſhould not be heard of in twelve Months after the Expiration of the abovementioned three Months, the Aſſurers agreed to pay the Loſs, and the Aſſured to repay the ſame, if afterwards the ſaid Ship ſhall be heard of in Safety. The Defendant underwrote two different hundred Pounds, at ſeparate Times, on the aforeſaid Policy, and the Ship proceeded on her Voyage on the 24th of *December*, as above mentioned, and was taken by the *French* on the 2d of *February* following, after an Engagement of more than an Hour with a much ſuperior Force, and after ſeveral of her Men were killed and wounded; and being thus conquered, 117 of her Men (including the Captain and all the Officers) moſt of her ſmall Arms and the Commiſſions, were removed into the Enemy's Ship, and carried into *France*, leaving only 17 *Engliſh* on board the *Salamander* (of which five ſoon after died of their Wounds) and two *French* Officers, with 24 of their Men; and the ſaid Ship was in Poſſeſſion of theſe their Adverſaries, from Four of the Clock in the Afternoon of the ſaid 2d Day of *February* until Five of the Clock in the Afternoon of the 5th Day of the ſame Month, during all which Time ſhe was abſolutely in the Power of the Enemy, and was at the laſt mentioned Period taken by the *Hunter* Privateer, Captain *Richard Veale*, who put 30 of his Men and two Officers on board her, and kept her cruzing with him for eight Days, when the ſaid Captain *Veale* engaged and took a *Feench* Privateer, with which, together with his own Ship and the *Salamander*, he endeavoured

deavoured to gain ſome Port in *England* or *Ireland*; but the Wind and Weather not permitting, he carried them all to *Liſbon* (a neutral Port) where he lay a conſiderable Time: during which Captain *Veale* took out of the *Salamander* two Carriage Guns, and thirty hundred Weight of Bread for his Ship's Uſe; and the Captain of the *Durſley* Privateer (being in Partnerſhip with the *Hunter*) alſo took out two Carriage Guns for the Uſe of his Ship: Of all which Captain *Veale* made a *Manifeſto*, and ſent it to his Owners, that they might be accountable for them where they ought.

Captain *Veale* inſtituted a Suit in the Vice Admiralty Court at *Gibraltar*, againſt the ſaid Ship the *Salamander &c.* and on the 29th of *April* 1745, obtained a Decree from the Judge thereof, that the ſaid Ship, *&c.* ſhould be reſtored to her rightful Owners, they paying, in lieu of Salvage, one third Part of the full, true and real Value thereof, free and clear from all Charges and Deductions whatſoever; but as her Capture had intirely overſet her Voyage before the Expiration of the three Months, for which ſhe was inſured, the Plaintiff demanded the Inſurance of the Defendant, which being denied, he ſued him for the ſame; and on the Trial at *Guildhall*, the Jury brought in their Verdict *ſpecial*; which occaſioned its being argued before the Judges of the *King's Bench* in *Hil.* Term, 1746, and the Diſpute in Queſtion ſeemed to turn on this Point, *viz.* Whether a Policy made free of Average can affect the Inſurer, but by a total Loſs? This was ſtrongly urged in Favour of the Defendant, whoſe Counſel ſuppoſed that the Re-capture prevented the total Loſs, which would have happened, had the Enemy carried her into *France*; and that he was freed by the Policy from Payment of the Average ordered to be paid in lieu of Salvage; ſo that conſequently the Plaintiff's Demand on him was ill founded and unjuſt: But the Arguments on the contrary Side being ſtrong and concluſive, I ſhall tran-

ſcribe the greateſt Part of them. And the Queſtions now upon this ſpecial Verdict are two; one to be conſidered upon the firſt, the other on the ſecond Count in the Declaration.

1ſt, Whether the Property of the Prize was diveſted by the taking: And,

2dly, Whether, as it was found that the Voyage was totally broke, and the Purpoſe thereof defeated by the Capture, and no Reſtitution made to the Owners, there is not a Breach of the Policy, ſufficient to give the Plaintiff a Right of Action, notwithſtanding the Recapture; and though the Property be not changed, and the Inſurance be made free of Average.

1ſt, It is found that the Ship was taken by Enemies as a Prize, and that 117 Men (including the Captain and Officers) with the greateſt Part of the ſmall Arms, Commiſſion, *&c.* were carried into *France*, and only 17 Men were left on board, all of which except three, were wounded, and five of them died ſoon after; ſo that they were not able to navigate the Ship: But two *French* Officers, and 24 Men were put aboard, and the ſaid Ship ſo conquered remained in the Poſſeſſion of the Enemy from the 2d to the 5th of *February*, and during all that Time, was abſolutely in their Power, and that thereby the Voyage inſured was totally prevented.

Theſe Facts, according to the Laws of *France*, *Spain*, *Holland*, *Sweden*, and other *European* Nations, are ſufficient to diveſt the Property of the Prize; but, according to the Opinion of ſome Writers who draw their Notions from the Rule of the *Civil Law*, the Property of a Ship taken at Sea, is not diveſted, till the Prize is brought *infra fines*, or *infra præſidia capientium*.

If the Queſtion therefore is to be determined by the preſent Law of Nations, it is with the Plaintiff; for thereby the Property of a Prize is changed by a firm Poſſeſſion of 24 Hours. But if by the Opinion of certain Doctors of the *Civil Law* it is againſt the Plaintiff,

Plaintiff, the Prize not being brought *infra fines hoſtium.*

It ſeems to be agreed by all the contending Writers upon this Queſtion, that the legal Principle which veſts the Property of a Prize, is ſuch a Taking as enables the Captor to retain and defend the Poſſeſſion; but their Diſpute is concerning what Circumſtance is declarative of ſuch Ability; and upon this Head it is that a Variety of Difficulties have aroſe.

Van Bynkerſhock, ſpeaking to this, ſays, *Quando autem ita adepti, videamur poſſeſſionem ut retinere vel non retinere poſſimus, cauſarum varietas definire non permittit.*

They all agree, that when the *ſpes probabilis recuperandi* is loſt, or the Parties may be ſaid *depoſuiſſe animum recuperandi*, the Property becomes the Captor's.

But they cannot ſettle what ſhall be Evidence thereof, though they confeſs it would be beneficial to the Public, and reaſonable in itſelf, to put an end to an Infinity of Litigation by reducing the Queſtion to a Certainty; yet, notwithſtanding ſo neceſſary an End is fully agreed upon, the Means leading to it are not; the Doctors, adhering zealouſly to the Rules of the *Civil Law*, contend, that the *Criterion* for determining the Queſtion ſhall be a bringing the Prize *infra præſidia*; the Law of Nations regarding rather the general Intereſt and Convenience of the Subjects, and to give all poſſible Encouragement in the Time of War for the retaking of Prizes from the Enemy, hath ordained that a Poſſeſſion of 24 Hours ſhall be ſufficient.

And now it is for the Judgment of the Court, to which Side they will pay the Deference; that is, whether to the Opinions of ſuch Doctors as *Albericus Gentilis*, *Petrinus Bellus*, and *Van Bynkorſhock*, or to the Law and conſtant Practice uſed in other Nations.

If they adhere to the Doctors, the Queſtion is not finally ſettled amongſt them; for ſome contend, that

there muſt be a bringing *intra fines capientium*, others only *infra claſſem*, and ſome into a neutral Port, *&c.* and ſome go ſo far as to ſay, that after a bringing *intra præſidia*, there muſt be a ſailing to a new Deſtination.

But by the Law of Nations of modern or later Inſtitution, the Certainty ſought for is definitive, *viz.* a Poſſeſſion of twenty-four Hours; and the Authorities to prove the Law of Nations on this Queſtion are,

1. *Recentiori jure gentium inter* Europæos *populos introductum videmus ut talia capta cenſeantur, ubi per horas viginti quatuor in poteſtate hoſtium fuerint.* Grotius, Lib. 3. Cap. 6. §. 4.

2. *La coutume vient des anciennes loix d'* Allemagne, *& elle a & etablie limitation de l' eſpece de* 24 *heures qu'elles limiteroient non ſans raiſon. Barb.* Notes on *Grotius*, L. 3. C 6.

5. *La même choſe ſe pratique en* Angleterre, *& dans le Royaume de Caſtille.* Idem.

4. *Sed hodie naves ab hoſte captæ communi inter Chriſtianos &* Europæos *populos, ſive jure, ſive conſuetudine poſtliminio—— non recipiuntur ſi hoſtis eas non eodem die navali pugna iterum amiſerit, ſed per viginti quatuor horas in poteſtate victoris fuerint; tunc enim vere captæ, & proprii juris factæ cenſentur.* Locin. de jure maritimo, &c. L. 2. C. 4. S. 14. Zouch de jure feciali, Part. 2. S. 8, 21.

5. *Quicquid vero clariſſimi interpretes diſputent de præda prius in præſidia deducenda quam fiat poſſidentis, aliud tamen conſuetudine & moribus* Europæorum *hodie obſervatur, ut nimirum præda capientium fiat, & præſertim naves hoſtium, de quibus hic ſermo eſt, ſi a victore per diem & noctem poſſeſſæ fuerint.* Loc. L. 2. C. 4. S. 8.

6. *Si aucun navire de nos ſujets eſt repris ſur nos ennemis, apres qu'il aura demeuré enter leur mains pendant* 24 *heures, la priſe en ſera bonne; & ſi elle eſt fait avant les* 24 *heures, il ſera reſtitué au proprietaire. Ordon. touchant la Marine, Tit. Priſes, Act.* 8.

7. *Simon*

7. *Simon Greenewegen*, an Author frequently quoted by the beſt Writers, and * "who was a celebrated "Lawyer in the laſt Century, and a Family that "had for a long Courſe of Years ſat at the Helm of "Government, proves, that the Law requiring a Ship "to be brought *infra præſidia* is abrogated, and puts "it down as ſuch in his Treatiſe *de legibus abrogatis* "*& inuſitatis in* Hollandia, *viciniſque regionibus*, "where he diſtinguiſhes what ſhall be ſaid to be Pri-"zes by the Civil Law, and what by the Law of "Nations; to which End, in Lib. 49. Tit. 15. *de* "*captivis, &c.* he makes ſeveral Diviſions and Subdi-"viſions of the Subject, and has two Subdiviſions "*de navibus, viz. captæ, quæ dicuntur jure civili*; "ſecondly, *gentium*, and under this Head *gentium*, "quotes the Paſſage aforeſaid from *Grotius*, and adds, "that now in *Holland* a Prize may be good, *nullo* "*habito reſpectu temporis quo navis in hoſtium poteſtate* "*fuerit, dum tamen infra præſidia perducta non fuit.*" *Sim. Green. de leg. ab. P.* 353.

As by the Law of other Nations a Poſſeſſion of 24 Hours undoubtedly diveſts the Property of a Prize, one might conclude, that as this Queſtion has not been judicially determined by this Court, it would be reaſonable to put the Subjects of *England* upon the ſame Footing with thoſe of *France*, *Spain*, *Holland*, *Sweden*, &c. eſpecially in mercantile Contracts, which ought to have the ſame Conſtruction in one trading Country as another; and more eſpecially as this Kind of Inſurance, *Intereſt or not*, is a Branch of Trade peculiar to us: But if this will not do, the Queſtion upon the ſecond Count is to be conſidered, which is,

Whether upon this Count there hath not been a Breach of the Policy or Contract of Inſurance, ſufficient to give the Plaintiff a Right of Action upon Intereſt or not?

It is found, that the Prize was fitted out to cruize againſt the King's Enemies: That all her Men, except ſeventeen as aforeſaid, were taken and carried into

* *Dict. Mor.*

France, and thoſe left not able to navigate the Ship; that the Voyage deſcribed in the Policy was thereby totally prevented; and that at the Time of the Verdict the Ship remained at *Liſbon*, not reſtored to the Owners.

This ſeems to be a Breach, taking the Policy either upon the Foot of a *Contract* or *Wager*.

Conſidering it as a *Contract*, the Agreement is, that the Ship ſhall not be prevented in her Voyage by any of the Perils or Riſks in the Policy, amongſt which are all *Surpriſals* at Sea, *Arreſts*, *Reſtraints*, and *Detainments* of all Kings, Princes, and People whatſoever; and *here* has been a Surpriſal at Sea, and a Detention, whereby the whole Voyage inſured was totally broke, as is found by the Verdict; and this is a much ſtronger Caſe than *Depaba* and *Ludlow* (Page 238. Parag. 61.) where the Court for very good Reaſons determined unanimouſly for the Plaintiff, as appears by the Judgment of Lord Chief Juſtice *King*, delivered as the Opinion of the whole Court; whereby it alſo appears, that a total Loſs is not neceſſary in all Caſes to give the Plaintiff a Right of Action upon a Policy, *Intereſt or not*.

The Defendant's Counſel inſiſted in his Argument, that as the Policy was made free of Average, nothing could affect the Inſurer but a total Loſs, becauſe all other Loſſes are included within the Import of Average by the Words of the Contract.

This is a Miſtake, and appears to be ſo from the Words of the Policy, which immediately follow, *viz. and without Benefit of Salvage to the Inſurer*. If nothing but a Loſs of the whole could affect the Inſurer, it is not conſiſtent that he ſhould renounce the Benefit of Salvage; for what could he have to do with Salvage, in caſe he was chargeable if any thing was ſaved?

This, therefore, is a Conſtruction not warrantable, being abſolutely inconſiſtent with the expreſs Words of the Policy, which are, *free of Average, and without Benefit of Salvage to the Aſſurer*.

And

And as ſuch a Conſtruction is inconſiſtent, another is to be ſought which is not ſo repugnant, and which may permit the Words before mentioned to ſtand with more Propriety; and this may be done by confining the Import of Average to a Limitation: And the Definition of Average in the firſt Article of the Ordinance of *Fontainbleau touchant la Marine, titre Avaries*, eſtabliſhes ſuch a Limitation of the Import of this Word, as will give it a conſiſtent Place, as it ſtands in a Policy of the Inſurance. It is by the ſaid Ordinance defined thus: *Toute depenſe extraordinaire qui ſe fera pour les navires & marchandiſes, conjointement ou ſeparement, & tout dommage qui leur arrivera depuis leur charge & depart juſques à leur retour & dechargement, ſeront reputez avaries.* *Ordon.* of 1681. Tit. 7. *des Avaries.*

And it is certain the true Import of the Word *Average*, is, ſuch Damages as happen to the Ship or Cargo during the Voyage, as the Loſs of Anchors, Maſts, Cables, *&c.* but that which breaks up the Voyage, as in this Caſe a Capture by Enemies, whereby the whole End, Purpoſe, and Deſign of the Cruize was abſolutely defeated by the actual taking of all the Men, Arms, Proviſions, Commiſſion, Officers, *&c.* cannot, from the obvious Nature, Circumſtances, and Reaſon of the Thing, and the Authority of the Caſe of *Depaba* and *Ludlow*, be eſteemed barely as an Average to which the Inſurer is not liable, but muſt be conſidered as a total Breach of the Contract of Inſurance to which he is liable.

If the Conſtruction contended for by the Defendant was to prevail, the Inſurer would rather be indemnified from, than ſubjected to the Perils inſured againſt; for if a Taking happens at the Beginning of a Voyage inſured from one Port to another, or for a Time only, and the Voyage be thereby broke up, or the Time elapſed, the Recovery of the Ship will ruin the Inſured, and be a general Releaſe to the Inſurer, who will alſo be thereby indemnified from all

the Riſks in the Policy; whereby, if no ſuch Capture had happened, the Ship might have been loſt, and a Capture and Detention, breaking up the Voyage inſured, might put the Inſurer in a better Condition than if there had been no Capture at all, which cannot be the Meaning of the Parties, being inconſiſtent with the apparent Deſign of an Inſurance.

Beſides, in this Caſe, the Ship inſured is not to this Hour, as appears by the Verdict, reſtored to the Owners, neither is it worth their while to pay Salvage and Charges, and raiſe Men to bring her home; and ſuppoſe they had, and ſhe had been taken again by the Enemy, the Time of Inſurance was expired, and the Inſurer in ſuch Caſe would have ſaid he was not liable. Therefore the Loſs in Queſtion muſt be conſidered as a total Breach of the Policy, and not as a bare Average.

1ſt, Here was a Taking and a Detention.

2dly, All the Men, Commiſſion, *&c.* taken and carried into *France*, and never retaken.

3dly, Though the Ship was retaken, yet ſhe was not reſtored, and poſſibly never may.

4thly, If reſtored, her Men, Arms, Proviſions, *&c.* being taken, could not purſue the Purpoſe of the Voyage, and therefore the Inſured may abandon the Benefit of Salvage.

5thly, The Verdict has found the Voyage was thereby totally defeated, and that is ſufficient.

There are many Caſes where the Plaintiff on a Policy, *Intereſt or no Intereſt*, has recovered, though no total Loſs of the Ship, but becauſe by the Perils in the Policy, ſhe was rendered unable to perform the Voyage, as in the Caſe of the *Ludlow-Caſtle*, and the Caſe of the *Providence*, between *Carter* and *Barrel*, where the Ship came into *St. Ives*, bound for *London*, but being leaky, the Cargo was unloaded, and the Ship ſold at *St. Ives*; tho' it was proved ſhe might at a conſiderable Expence have been made fit to perform the Voyage, yet, as without it the Voyage could not

be

be performed, the Plaintiff recovered, though no Loſs at all of the Ship.

So in the preſent Caſe, if the Ship had been retaken in an Hour, ſhe could not have purſued the Voyage; for all the Men, *&c.* were taken and carried into *France*, and therefore ſhe could not navigate herſelf, neither could ſhe have performed the Voyage inſured.

But taking it upon the Footing of a *Wager*, as put by the Defendant's Counſel, what is the *Wager?* It is, that ſuch a Ship, for, and notwithſtanding any Arreſts, Reſtraints, *&c.* will ſail from *London* to *Jamaica*, or ſail for three Calendar Months upon a Cruize (as the Adventure may be.) If therefore by any Arreſt, Taking, Detention, *&c.* the Ship is totally prevented from proceeding in the Voyage, is not the Wager loſt? has not a Contingency inſured againſt happened?

Upon this Caſe, for the Reaſons aforeſaid, and many others ariſing from the Nature of the Contract of Aſſurance, and particularly upon the Authority and Reaſon in *Depaba* and *Ludlow*, the Plaintiff hoped for the Judgment of the Court in his Favour, which was accordingly given, and the Judges were unanimous in their Opinion. *Lex Mercat. Red.* 272. *Pond* and *King*. 21 *Geo.* 2.

62. The *Broomfield* was inſured at and from the *Leeward Iſlands* to *Briſtol*, *Intereſt or no Intereſt*, *free of average Loſs*, and without Benefit of Salvage, and, among other Underwriters, the Defendant ſubſcribed. The Ship in her Paſſage home was taken by a *Spaniard*, who took out four of her Men and the Captain, and put nine of his Men aboard, and ordered them to carry her to *Bilboa*, for which Place her Courſe was directed; and on her Voyage there, and after having been in Poſſeſſion of the Enemy thirty-nine Hours, ſhe was retaken by the *Terrible* Privateer belonging to *Liverpool*, and carried into *Waterford*, from whence ſome Propoſals were made to the Owners of the *Terrible*, in order to her Releaſe,

and

and Permiſſion to proſecute her intended Voyage to *Briſtol*; but not being agreed to, ſhe was brought to *Liverpool*, and after a Commiſſion of Appraiſement had iſſued out of the Admiralty, ſhe and her Cargo was ſold to pay the Salvage due to the Recaptors, as by Act of Parliament.

One of her former Owners now bought the whole, and afterwards parcelled her out among ſeveral Gentlemen at *Briſtol* (who became Co-partners with him) to which Place ſhe was ordered, and where ſhe arrived; though, as the Plaintiff ſuppoſes, this could not be an Arrival agreeable to, or within the Intent and Meaning of the Policy in queſtion, under the Circumſtances above ſtated, *viz.* of her Capture, Re-capture, Appraiſement and Sale, and with an entire new Set of Owners, he thinks he is intitled to a total Loſs.

The Defendant, on the contrary, urges that this was no more than a bare Capture and Recapture, which he ſays has never been deemed a total Loſs; in Reply to which the Plaintiff affirms, that this was ſtill more, for the Ship after being retaken, was carried into *Waterford* by the Privateer, kept ſome conſiderable Time there, afterwards was carried into *Liverpool*, and there (as before mentioned) with the Cargo, appraiſed and ſold to pay the Salvage, and a new Set of Owners engaged before ſhe ſet out for *Briſtol*, by which the whole Voyage was altered and loſt.

And to juſtify this Plea, he quoted Lord Chief Juſtice *Lee*'s Sentiments when he gave Judgment in the Caſe of the * *Salamander*, viz.

" We muſt not judge this Cauſe by the Rules of " the *Civil Law*, but we muſt judge it by the Rules " of the *Common Law*, and determine on this Policy " an Agreement and Contract between the Parties, " whoſe Intention and Meaning, when they en- " ter into it muſt govern; and although in the

* P. 239.

" *Civil*

" *Civil Law*, to make a Forfeiture of an Inſurance, " there muſt be a total Loſs of Property, that is not " a Reaſon why it ſhould be required in this Caſe, " becauſe here the Policy, by the Words of it ex- " tends to *Accident*, where there may be no Loſs of " Property, as taking by Pirates, Enemies, Men of " War, *&c.* And this (his Lordſhip declared) was " taken Notice of by Lord *King*, in the Caſe of *De-* " *paba* and *Ludlow*, where there was no Alteration of " the Property by that Capture, as *Sweden* was not " at War with *England*, and yet that was deemed a " total Loſs: but in the preſent Caſe, here was a " Capture by an Enemy; and his Lordſhip farther " ſaid, that the Queſtion on the *Salamander* was not " whether the Property of the Privateer was loſt by " this Capture, but whether the Capture was ſuch a " Peril, as is inſured againſt? The Judges were un- " animouſly of that Opinion, and Judgment was " given for the Plaintiff." Verdict for the Defendant. *Lex Mercat. Red.* 280. At *Guildhall* after *Mich.* 1750. *Daubony* v. *Read.*

65. *Peter Joyce*, a Mariner, being a Part-Owner of one Moiety of a Ship called the *Goodfellow* Privateer, together with the other Owners, fitted her out in a warlike Manner, to cruize againſt his Majeſty's Enemies, and in *April* 1744, obtained a proper Commiſſion for that Purpoſe from the Lords of the Admiralty: Mr. *Joyce*, being himſelf the Maſter of the Ship, and abroad, employed Meſſrs. *George Fitzgerald*, Uncle and Nephew, and Partners, to make an Inſurance for his Intereſt and Uſe: They accordingly procured a Policy of Inſurance for 1000*l.* hereafter particularly ſet forth, to be ſigned by ſeveral Underwriters, among whom the Defendant *Charles Pole* underwrote for 100*l.* on the 31ſt *Auguſt* 1744.

Mr. *George Fitzgerald* the Elder died in *March* 1743; and the Right of Action on this Policy ſurvived to Mr. *George Fitzgerald* the now Plaintiff.

The Purpoſe for which the *Goodfellow* Privateer was fitted out and employed during the Time for which

the Inſurance was made being on the 14th Day of *June* 1744, totally defeated by a Mutiny of the Sailors on board, their Deſertion from her, and carrying off the Fire-arms belonging to the Ship; the Plaintiff, in *Hilary* Term 1741, on the Behalf, and for the Uſe of *Peter Joyce*, brought an Action on the Caſe in the Court of King's Bench, againſt the Defendant *Charles Pole*; in which he declares as follows:

Whereas on the 31ſt Day of *Auguſt* in the Year of our Lord one thouſand ſeven hundred and forty-four, the ſaid *George* the Elder, and *George* the Younger, whom the ſaid *George* the younger hath ſurvived, were Partners together in the Way of Trade and Merchandize, to wit, at *London* aforeſaid, in the Pariſh of *St. Mary Le Bow*, in the Ward of *Cheap*; and the ſaid *George* the Elder, and *George* the Younger, being ſo Partners together, on the ſame Day and Year, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, according to the Cuſtom of Merchants, cauſed to be made a certain Writing or Policy of Inſurance, purporting thereby and containing therein, that the ſaid *George* the Elder and *George* the Younger, by the Name of *George Fitzgerald* and Company, as well in his own Name, as for and in the Name and Names of all and every other Perſon and Perſons to whom the ſame did, might, or ſhould appertain in Part or in all, did make Aſſurance, and cauſe himſelf and them, and every of them, to be inſured, loſt or not loſt, *at and from* Jamaica, *to any Ports and Places where and whatſoever, at Sea, or Shore, a cruiſing from Port to Ports, and from Place to Places, for and during the Term and Space of four Calendar Months*, upon the Body, Tackle, Apparel, *Ordnance*, *Munition*, *Artillery*, *Boat*, and other Furniture, of and in the good Ship and Veſſel called the *Goodfellow* Privateer, whereof was Maſter under God, for that preſent Voyage, *Peter Joyce*, or whoſoever elſe ſhould go for Maſter in the ſaid Ship, or by whatſoever other Name or Names the ſame Ship, or the Maſter thereof, was or ſhould be named or called; beginning

the

the Adventure upon the ſaid Ship, *&c. and immediately following the fourteenth Day of* June *then laſt*; *and ſo ſhould continue* until the ſaid Ship, with all her ſaid Tackle, Apparel, *&c.* ſhould be arrived at any Ports where and whatſoever, a cruiſing from Port to Ports, and Place to Places, *for and during the Term and Space of four Calendar Months*, commencing as above written, without Prejudice to that Inſurance; the ſaid Ship, *&c.* for ſo much as concerned the Aſſured, was and ſhould be valued (one half Part of the Ship) at one thouſand Pounds Sterling, without further Account to be given by the Aſſured for the ſame. Touching the Adventures and Perils which they the Aſſurers were contented to bear, and did take upon them in that Voyage, they were, of the Seas, Men of War, Fire, Enemies, Pirates, Rovers, Thieves, Jettizons, Letters of Mart and Countermart, Surpriſals, Takings at Sea, Arreſts, Reſtraints and Detainments of all Kings, Princes and People, of what Nation, Condition, or Quality ſoever, Baratry of the Maſter and Mariners, and of all other Perils, Loſſes, and Misfortunes, that had or ſhould come to the Hurt, Detriment or Damage of the ſaid Ship, *&c.* or any Part thereof: And in Caſe of any Loſs or Misfortune, it ſhould be lawful to the Aſſured, their Factors, Servants, and Aſſigns, to ſue, labour, and travail, for, in and about the Defence, Safeguard and Recovery of the ſaid Ship, *&c.* or any Part thereof, without Prejudice to that Inſurance; to the Charges whereof they the Aſſurers would contribute each one, according to the Rate and Quantity of his Sum therein aſſured: And it was agreed by them the Inſurers, that that Writing or Policy of Aſſurance ſhould be of as much Force and Effect as the ſureſt Writing or Policy of Aſſurance, theretofore made in *Lombard-Street*, or in the *Royal Exchange*, or elſewhere in *London*: And ſo they, the Aſſurers, were contented, and did thereby promiſe and bind themſelves, each for his own Part, their Heirs, Executors, and Goods, to the Aſſured, their Executors, Adminiſtrators and Aſſigns,

for

for the true Performance of the Premiſes; confeſſing themſelves paid the Conſideration due unto them for that Aſſurance by the Aſſured, at and after the Rate of twenty Guineas *per Cent.* And in Caſe of Loſs (which God forbid!) the Aſſured to abate but two Pounds *per Cent.* the Aſſurers being *free from all Average*; as by the ſaid Writing or Policy of Aſſurance, it doth and may more fully appear: Of which ſaid Writing, or Policy of Aſſurance, ſo made as aforeſaid, he the ſaid *Charles*, afterwards, to wit, on the ſaid thirty-firſt Day of *Auguſt*, in the ſaid Year of our Lord one thouſand ſeven hundred and forty-four, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, had Notice; and thereupon he the ſaid *Charles*, afterwards, to wit, upon the ſame Day and Year aforeſaid, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, in Conſideration that the ſaid *George* the Elder, and *George* the Younger, at the ſpecial Inſtance and Requeſt of the ſaid *Charles*, had undertaken, and then and there faithfully promiſed the ſaid *Charles* to perform and fulfil every Thing in the ſaid Writing or Policy of Aſſurance mentioned on their Parts and Behalfs to be performed and fulfilled; and had then and there paid to the ſaid *Charles* twenty Guineas as a Reward for the Inſurance of one hundred Pounds upon the ſaid Premiſſes mentioned and contained in the ſaid Writing or Policy of Aſſurance; he the ſaid *Charles* undertook, and then and there faithfully promiſed the ſaid *George* the Elder and *George* the Younger, that he the ſaid *Charles* would become, and he did then and there become an Aſſurer to the ſaid *George* the Elder and *George* the Younger, for the Sum of one hundred Pounds, on the Premiſſes mentioned in the ſaid Writing or Policy of Aſſurance; and that he the ſaid *Charles* would perform and fulfil every Thing in the ſaid Writing, or Policy of Aſſurance, contained to be performed on his the ſaid *Charles*'s Part and Behalf, as ſuch an Aſſurer, as to the ſaid one hundred Pounds by him ſo aſſured; and then and there ſubſcribed the ſaid Writing, or Policy of Aſſu-

rance,

rance, for the Aſſurance of the ſaid one hundred Pounds: And the ſaid *George*, the now Plaintiff, further ſaith, the ſaid Inſurance, ſo made by the ſaid *George* the Elder and *George* the Younger, as aforeſaid, was made for, and on Account of, and in Truſt for, and for the Uſe and Benefit of *Peter Joyce*; *and that the Intereſt which the ſaid* Peter Joyce, *at the Time of making the ſaid Inſurance, as aforeſaid, and during the ſaid Cruize and Voyage hereafter mentioned, had in the ſaid Ship, being a Privateer amounted to a large Sum of Money, to wit, two thouſand Pounds and upwards*; and that the ſaid Ship, on the ſaid 14th Day of *June*, in the ſaid Writing or Policy of Aſſurance mentioned, in the ſaid Year of our Lord one thouſand ſeven hundred and forty four, being at *Jamaica* aforeſaid in Parts beyond the Seas in good Safety, ſet ſail and departed from thence in and upon her ſaid intended Voyage a Cruiſing, according to the Intention of the ſaid Writing, or Policy of Aſſurance; and from and after the ſaid fourteenth Day of *June*, was a cruiſing from Port to Ports, until the ſaid Ship afterwards, and within the ſaid four Calendar Months, commencing from the ſaid fourteenth Day of *June*, to wit, on the twenty-third Day of *September*, in the ſaid Year of our Lord one thouſand ſeven hundred and forty-four, then ſailing upon the High Seas, and at a great Diſtance from *Jamaica* aforeſaid, and proceeding in her ſaid Voyage, was, in a mutinous Manner by Force and Arms, againſt the Will of the then Maſter and Officers of the ſaid Ship, ſeized, taken, reſtrained, and detained by the greateſt Part of the Mariners then on board her; and the Command, Direction and Government thereof were taken from the ſaid Maſter; and the ſaid Ship was not permitted to ſail and proceed in her ſaid Voyage a cruiſing any longer, but was then and there, contrary to, and againſt the Will of the ſaid Maſter and Officers, by the ſaid Mariners, in a mutinous Manner, carried back again to *Jamaica* aforeſaid; where the ſaid Mariners afterwards, to wit, on the thirteenth Day of the

ſame

ſame *September*, being then and there arrived with the ſaid Ship, *againſt the Will of the ſaid Maſter and Officers, run away from the ſaid Ship, with the Boats belonging to the ſame Ship, and totally quitted and deſerted her*; whereby, and *by Means whereof, the ſaid Ship did not, nor could not, perform her ſaid Voyage a Cruiſing, for and during the ſaid four Calendar Months*, according to the Intention of the ſaid Writing or Policy of Aſſurance; but, from the Time of taking, ſeizing, and detaining of the ſaid Ship, as aforeſaid, for and during the Reſidue of the ſaid four Calendar Months then to come and unexpired, was totally diſabled to perform the ſame: whereby the Owners and Proprietors of the ſaid Ship totally loſt all Profit, Benefit, and Advantage that might have accrued to them in and from the ſaid Cruize during the Reſidue of the ſaid four Calendar Months. Of all which Premiſſes the ſaid *Charles Pole* afterwards, to wit, on the firſt Day of *May*, in the Year of our Lord one thouſand ſeven hundred and forty-five, at *London* aforeſaid, in the Pariſh and Ward aforeſaid, had Notice, and was then and there requeſted by the ſaid *George* the Elder and *George* the Younger, to pay them ninety-eight Pounds, Parcel of the ſaid one hundred Pounds; deducting two Pounds Reſidue thereof, in reſpect of the ſaid Loſs, which the ſaid *Charles*, according to the Form and Effect of the ſaid Writing, or Policy of Aſſurance, and of his ſaid Promiſe and Undertaking, then and there ought to have paid to the ſaid *George* the Elder, and *George* the Younger.

There were two other Counts in the Declaration, which, being found for the Defendant, are not material.

To this Declaration the Defendant pleaded the general Iſſue.

The Cauſe was tried at the Sittings in *London*, before Lord Chief Juſtice *Lee*, by a ſpecial Jury; when, at the Requeſt of the Defendant's Counſel, a ſpecial Verdict was found that the ſaid *Charles*, on the thirty-firſt Day of *Auguſt*, in the Year of our Lord one thouſand

thouſand ſeven hundred and forty-four, in the City of *London*, did ſign and ſubſcribe the Policy of Aſſurance in the Declaration mentioned, in the Words and Figures following; that is to ſay,

In the Name of God, *Amen.* *George Fitzgerald* and Company, as well in his own Name, as for and in the Name and Names of all and every other Perſon or Perſons to whom the ſame doth, may, or ſhall appertain, in Part, or in all, doth make Aſſurance, and cauſeth himſelf and them, and every of them, to be inſured, loſt or not loſt, at and from *Jamaica*, *to any Ports and Places where and whatſoever, at Sea or Shore, a cruiſing from Port to Ports, and Place to Places, for and during the Term and Space of four Calendar Months*, upon the Body, Tackle, Apparel, *Ordnance*, *Munition*, *Artillery*, *Boat* and other Furniture, of and in the Good Ship or Veſſel called the *Goodfellow* Privateer, whereof is Maſter, under God, for this preſent Voyage, *Peter Joyce*, or whoſoever elſe ſhall go for Maſter in the ſaid Ship, or by whatſoever other Name or Names the ſame Ship or the Maſter thereof, is or ſhall be named or called, beginning the Adventure upon the ſaid Ship, *&c.* from and immediately following the fourteenth Day of *June* laſt; and ſo ſhall continue and endure until the ſaid Ship, with all her ſaid Tackle, Apparel, *&c.* ſhall be arrived *at any Ports and Places where and whatſoever, a cruiſing from Port to Ports, and Place to Places, for and during the Term and Space of four Calendar Months, commencing as above written*, without Prejudice to this Inſurance; the ſaid Ship, *&c.* for ſo much as concerns the Aſſured, is and ſhall be valued *(one Half-part of the Ship)* at one thouſand Pounds Sterling, without further Account to be given by the Aſſured for the ſame. Touching the Adventures and Perils which we the Aſſurers are contented to bear, and take upon us in this Voyage, they are of the Seas, Men of War, Fire, Enemies, Pirates, Rovers, Thieves, Jettizons, Letters of Mart and Countermart, Surprizals, Takings at Sea, Arreſts, Reſtraints,

and Detainments, of all Kings, Princes and People, of what Condition or Quality ſoever, Baratry of the Maſter and Mariners, and of all other Perils, Loſſes and Misfortunes, that have or ſhall come to the Hurt, Detriment or Damage of the ſaid Ship, *&c.* or any Part thereof: And in Caſe of any Loſs or Misfortune, it ſhall be lawful to the Aſſureds, their Factors, Servants and Aſſigns, to ſue, labour and travail, for, in and about the Defence, Safeguard, and Recovery of the ſaid Ship, or any Part thereof, without Prejudice to this Inſurance; to the Charges whereof we the Aſſurers will contribute each one according to the Rate and Quantity of his Sum herein aſſured. And it is agreed by us the Inſurers, that this Writing or Policy of Aſſurance ſhall be of as much Force and Effect, as the ſureſt Writing or Policy of Aſſurance heretofore made in *Lombard Street* or in the *Royal Exchange*, or elſewhere in *London*; and ſo we the Aſſurers are contented, and do hereby promiſe, and bind ourſelves, each one for his own Part, our Heirs, Executors, and Goods, to the Aſſured, their Executors, Adminiſtrators, and Aſſigns, for the true Performance of the Premiſſes; confeſſing ourſelves paid the Conſideration due unto us for this Aſſurance, by the Aſſured, at and after the Rate of twenty Guineas *per cent.* and in caſe of Loſs (which God forbid!) the Aſſured to abate but two Pounds *per cent. the Aſſurers being free from all Average.* In Witneſs whereof, we the Aſſurers have ſubſcribed our Names and Sums. Aſſured in *London*, this 30th of *Auguſt* 1744, 100*l.* *Charles Pole*, one hundred Pounds *Prem.* received 31ſt *Auguſt*, 1744.

" And the ſaid Jurors further ſaid, that the ſaid " Ship *Goodfellow* was ſafe at *Jamaica*, the 14th Day " of *June* one thouſand ſeven hundred and forty four; " and ſailed from thence the ſame Day upon the " Cruize in the Policy before mentioned; and that " the ſaid Ship was an *Engliſh* Privateer, and duly " commiſſioned as ſuch by the Lords Commiſſioners " of the Admiralty of *Great Britain.*

" And

" And the ſaid Jurors further ſaid, that during all " the Time of the ſaid Cruize, there was open War " carrying on by the King of *Great Britain* againſt " the *French* King and the King of *Spain*; and that " on the Tenth Day of *July* one thouſand ſeven " hundred and forty-four, the ſaid Ship *Goodfellow*, " in her ſaid Cruize, met with a *French* Ship, with " Money and Goods on board to the Value of *four* " *thouſand and two hundred Pounds Sterling, and made* " *Prize thereof*; and that afterwards, *viz.* upon the " 31ſt Day of *Auguſt* following, *Peter Joyce*, the " Captain of the ſaid Ship *Goodfellow*, being through " Illneſs unable to continue in the Command of the " ſaid Ship *Goodfellow*, quitted the ſaid Ship, with " the Conſent of all the Crew thereof; and the Firſt " Lieutenant thereof, *John Huſſey*, was, by joint " Conſent of the ſaid Captain, and all the Sailors and " Mariners belonging to the ſaid Ship, appointed " Commander thereof. And the ſaid Jurors, upon " their ſaid Oath, further ſaid, that the ſaid Ship " *Goodfellow*, under the Command of the ſaid *John* " *Huſſey* (on whom the ſaid Commander would neceſ- " ſarily have devolved, in Caſe of the ſaid Captain " *Peter Joyce*'s Death) was ſailing on the ſaid Cruize, " for a Port or Place called the *River of Dogs*, to " procure Water; and afterwards, whilſt the ſaid Ship " was neceſſarily ſailing for the ſaid *River of Dogs* as " aforeſaid, and within the four Months mentioned " in the ſaid Policy, *viz*, on the twenty-third Day of " *September* one thouſand ſeven hundred and forty- " four, the Crew of the ſaid Ship mutinied againſt " the ſaid Commander *John Huſſey*, and Officers; and " by Force carried the ſaid Ship, againſt the Will of " the ſaid Commander *John Huſſey*, and Officers, " who could not reſiſt the ſame, back towards *Ja-* " *maica*; and, before her Arrival in Port there, " cauſeleſly, againſt the Conſent of the ſaid Com- " mander *John Huſſey*, ſeized the Boat, Fire Arms, " and Cutlaſſes belonging to the ſaid Ship *Goodfellow*, " and carried off the ſame, and deſerted the ſaid Pri-

" vateer; by which the ſaid Cruize was totally pre-
" vented and loſt for the Remainder of the ſaid four
" Months, from the ſaid twenty-third Day of *Septem-*
" *ber:* And the ſaid Jurors, upon their ſaid Oaths,
" further ſay, that the ſaid Ship arrived at *Jamaica*
" upon the 29th Day of *September*, in the ſaid Year
" 1744, and was there in good Safety at and after
" the End of the four Months aforeſaid; but was
" prevented by the ſaid Mutiny and Deſertion from
" further purſuing her ſaid Cruize: And the ſaid Ju-
" rors, upon their ſaid Oath, *further ſay, that the In-*
" *ſurance upon the ſaid Ship* Goodfellow *was made for*
" *the Account of* Peter Joyce *the Owner, and alſo the*
" *Captain for the former Part of the Cruize; and that*
" *the ſaid* Peter Joyce *had Intereſt in the ſaid Ship*
" Goodfellow *to the Amount of the Sum inſured*;
" but whether, upon the whole Matter by them the
" ſaid Jurors in Form aforeſaid found, the aforeſaid
" *Charles Pole* did undertake and promiſe in Manner
" and Form within written, or not, the ſaid Jurors
" know not, but pray the Advice of the Court there-
" upon: And if, upon the ſaid whole Matter by the
" ſaid Jurors in Form aforeſaid found, the ſaid Court
" ſhall be of Opinion that the aforeſaid *Charles Pole*
" did undertake and promiſe in the Manner and
" Form within written; then the ſaid Jurors, upon
" their ſaid Oath, ſay, that the ſaid *Charles* did un-
" dertake and promiſe in the Manner and Form as
" the ſaid *George Fitzgerald* within hath declared, and
" aſſeſs the Damages of him the ſaid *George Fitzge-*
" *rald*, upon the Occaſion, beſides his Coſt and
" Charges, about his Suit in this Behalf ſuſtained, to
" ninety and eight Pounds; and, for theſe Coſts and
" Charges, to forty Shillings: But if upon the ſaid
" whole Matter by the ſaid Jurors, in Form afore-
" ſaid, found, the ſaid Court ſhall be of Opinion,
" that the ſaid *Charles Pole* did not undertake and
" promiſe in Manner and Form as the ſaid *Charles*
" *Pole*, by his Plea, hath alledged; then the ſaid Ju-
" rors, upon their ſaid Oath, ſay, that the ſaid *Charles*

" *Pole*

" *Pole* did undertake and promiſe in Manner and " Form as the ſaid *Charles Pole*, by his Plea, hath " alledged."

Upon this Verdict, the Court of King's Bench, upon Argument, gave Judgment for the Plaintiff; upon which a Writ of Error was brought in the Exchequer Chamber; and, after twice arguing the Caſe, the Judgment, by the unanimous Opinion of all the eight Judges of the ſaid Court, was reverſed.

The Plaintiff brought his Writ of Error in Parliament againſt the Judgment pronounced in the Exchequer Chamber. The general Errors are aſſigned; and the Defendant has pleaded there is no Error; and thereupon Iſſue is joined.

Argument for the Plaintiff.

It is found, that by the Mutiny, *&c.* the Voyage and Cruize was totally prevented and loſt, for the Remainder of the four Months, from the 23d *September*. —It is *averred*, that *Peter Joyce* had Intereſt during the Cruize in the Ship, and *found*, that he had Intereſt in the Ship to the Amount of the Sum inſured:

That the Ship was in Being at and after the End of the four Months.

The general Queſtion is, Whether an Event has happened, upon which the Underwriters, by the Terms of the Policy, are to pay?

Though different Accounts are given of the Invention of Inſurances, yet they certainly were brought into Practice by Merchants for the Sake of Trade, and in order to divide the Riſk.

The Nature of the Contract originally was, that a ſpecified Voyage ſhould be performed free from Perils: And, in caſe of Accident, the Inſurer was, for a certain Price, to bear the Trader harmleſs.

Hence it followed, that this Contract originally related to the Safety of a Voyage particularly deſcribed, in reſpect either of Ship or Cargo; and that the Inſured could not recover beyond the Amount of his real Loſs: Therefore, without abandoning what was

ſaved to the Inſurer, he could not recover the whole Value, except in caſe of total Loſs.

A very inaccurate Form of this Contract was anciently uſed among Merchants, and drawn by themſelves.

It was brought into *England* by Perſons who came from abroad, and ſettled in *Lombard-Street*.

The Terms of this Contract, tho' very imperfectly penned, having acquired a Senſe from the Uſage of Merchants, the Form is followed to this Day; and every Policy refers to thoſe made in *Lombard-Street*.

Hence, contrary to the general Rule, Parole Evidence is admitted to explain this Contract, though in Writing: And the Words are controuled, or liberally ſupplied, by the Intent of the Agreement, the Uſage of Merchants, and, above all, by judicial Determinations, which are the ſtrongeſt Evidence of the received Law of Merchants.

Upon theſe Policies, the Voyage, and not the bare Safety or Exiſtence of Ship or Cargo, is the Subject-matter of the Inſurance.

In Proceſs of Time Variations were made, by expreſs Agreement, from the firſt Kind of Policy: It being troubleſome to the Trader to prove the Value of his Intereſt, and aſcertain the Quantity of the Loſs, he gave the Inſurer a high Premium to agree to eſtimate his Intereſt at a preciſe Sum, and to give up his Claim to what might be ſaved; and the Inſured, on the other hand, waved any Claims of Contribution, in Reſpect of Accidents which might obſtruct, but not defeat the Voyage.

To recover upon this kind of Policy, the Inſured need only prove, that he had an Intereſt, without ſhewing the Value.

Caſes where it might not be proper for the Trader to diſcloſe the Nature of his Intereſt, introduced a third Kind of Policy; where the Inſurer diſpenſed with the Inſured having any Intereſt either in Ship or Cargo.

In theſe two laſt Kinds of Polices, valued *free from Average*, and Intereſt or no Intereſt, it is manifeſt that the Performance of the Voyage or Adventure, in a reaſonable Time and Manner, and not the bare Exiſtence of the Ship or Cargo, is the Object of the Inſurance; and ſo it has been often adjudged, as appears by the ſeveral Caſes following.

*Inſurance on a Hoy uſed for a Packet-Boat from *Helvoetſluys* to *Harwich*, Intereſt or no Intereſt, without further Account. The Hoy was taken by a *Swediſh* Ship (though no War then between *Sweden* and *Great Britain.*) After being nine Days in the Cuſtody of the *Swediſh* Ship, the Hoy was retaken by an *Engliſh* Man of War, carried to *Copenhagen*, and from thence to *Harwich*, where ſhe was at the Time of the Trial.—A Verdict was given for the Plaintiff, ſubject to the Opinion of the Court of *C. B.* The Caſe was twice argued, firſt by Civilians, and then by common Lawyers; and the Court gave Judgment for the Plaintiff, though the Ship was then in Being at *Harwich*. The Queſtion was not, whether the Property of the Ship was loſt by the Capture; but Whether the Capture was a Peril inſured againſt, and had happened in the Voyage?

Inſurance on the Ship called the *Ludlow Caſtle* Man of War, from *Jamaica* to *England*, Intereſt or no Intereſt, *free of Average*, &c. This Ship was in her Voyage compelled by Storm at Sea to put into *Antigua*; where Admiral *Knowles*, being in want of a Hulk for his Majeſty's Service, thought proper to convert the *Ludlow Caſtle* to that Uſe.—The Treaſure on board her was brought Home in the *Scarborough*. ——The Inſured brought his Action; and though it appeared in Evidence that the Ship was exiſting, it was determined, and by a ſpecial Jury a Verdict given accordingly, that, the Voyage from *Jamaica* being loſt, the Plaintiff was intitled to recover, which he did. *Barclay* and *Collier*. *Mich.* 17 *Geo.* 2. *B. R.*

* *Depaba* and *Ludlow*. See P. 238.

Inſurance on the *Sarah* Galley, at and from *London* to *Gibraltar*, and from thence to *London*, valued at the Sum inſured. This Ship was chartered from *London* to *Gibraltar*, and thence to the *Nore*, to receive Orders from the Freighter; and the Plaintiff was the ſole Owner of the Ship. The Ship arrived at *Gibraltar* in *June*; and was loaded with Wines by the Freighter's Correſpondent for her Return Voyage. At *Gibraltar* the Ship was ſeized by the *Saliſbury* and *Solebay* Men of War. The Maſter was turned out of Poſſeſſion, and ſeveral of the Sailors impreſſed. The Captors proceeded againſt the Ship and Cargo as forfeited.—The Ship was ordered to be reſtored; and was ſent by the Freighter's Correſpondent with a Cargo for *Dunkirk*; where ſhe was afterwards overſet and loſt. An Action was brought by the Inſured; and though it was relied on for the Defendant that the Ship was not totally loſt, but had been delivered, after the Capture, to the Agent of the Freighter, and by him ſent another Voyage; yet as the taking at *Gibraltar* was a Breach of the Policy in the Voyage, whereby the Return Voyage was prevented, a ſpecial Jury gave the Plaintiff a Verdict for a total Loſs; and he had Judgment accordingly. *Storey* and *Brown*. *Trin.* 18 and 19 *Geo.* 2. 1746. *B. R.*

Inſurance on the *Anna*, at and from any Port, or Place, or Degree of Latitude, whereſoever the Ship might be on the 7th *May* 1741, to any Port, Place, and Degree of Latitude, until her Arrival at *London*, Intereſt or no Intereſt, *free of Average*, &c. This Ship was a Tender to the Ships ſent to the *South Sea* under the Command of Lord *Anſon*, and proceeded to the Iſland of *Juan Fernandez*, where ſhe was unloaded, and diſcharged the King's Service: But being in Want of Stores to return to *England*, ſhe was ſold for the Uſe of the Fleet, by the Captain, for 300*l.* for which he received a Bill on the Commiſſioners of the Navy, afterwards paid to the Plaintiff, the ſole Owner, together with the Freight, and all the Sailors Wages, to the Time of the Sale of the Ship. The

Plaintiff

Plaintiff and Owner alſo received 6410*l.* for the Freight of the outward bound Voyage, and 2590*l.* as ſeven Months Freight, being the Time computed the Ship would have taken to return Home. An Action was brought on the Policy; and altho' it was inſiſted on for the Defendant, that the Ship had not been deſtroyed by any Peril in the Policy; but ſold by the Owner for the Uſe of the Government, who had, for the Conveniency of the Service, diſpoſed of her as was thought fit; and that the Inſured had actually received a Price and Freight for her, as having performed her homeward-bound Voyage; ſo that, if there was any Loſs in Point of Value, it would only be a partial and Average Loſs, which was expreſsly not to charge the Inſurers: Yet upon all the above Facts (agreed between the Parties) as the Ship had been rendered incapable of performing the Service for which ſhe was fitted out, *viz.* attending the Fleet in the *South Seas*, and Home, the Plaintiff recovered a Verdict for a total Loſs, by a ſpecial Jury, agreeable to the Directions of the Court. *Hanbury* and *King*. *Mich.* 19 *Geo.* 2. *B. R.* 1746.

Inſurance on Goods in the *Durſley* Galley, Intereſt or no Intereſt, *free of Average*, &c. at and from *Jamaica* to *Briſtol*. The Ship was, in her Voyage, taken by a *Spaniſh* Privateer, and carried into a Port in *Spain*; where, after being kept eight Days, ſhe was cut out by an *Engliſh* Privateer. The Inſured brought an Action on the Policy: The Inſurer inſiſted it was only an Average Loſs, the Ship and Goods exiſting, and, by Statute, were to be reſtored to the Owners on Salvage: But it was determined, and, by a ſpecial Jury, a Verdict given accordingly, that, notwithſtanding the Exiſtence of the Ship and Goods, yet the inſured Voyage being loſt, the Plaintiff was intitled to recover upon that Policy. *Dean* and *Dicker*. *Hil.* 19 *Geo.* 2. 1746. *B. R.*

Inſurance on the *Diſpatch* Galley, Intereſt or no Intereſt, *free of Average*, &c. from *Jamaica* to *Hull*. In her Voyage ſhe was taken by a *French* Privateer, and

and carried to *Hamburgh*; and, after being twelve Days in the Hands of the Enemy, ſhe was taken by *Hurſt*, Maſter of an *Engliſh* Ship, and brought to *London*; where ſhe was adjudged to be reſtored to the Owner, paying Salvage. The Owner ſold the Ship, and paid the Salvage. An Action being brought on the Policy, notwithſtanding the Ship had not been loſt, but was ſold by the Owner, it was held to have been a Loſs of the Voyage; and the ſpecial Jury gave a Verdict accordingly. *Whitehead* and *Bance. Mich.* 23 *Geo.* 2. 1749. *B. R.*

Many other Sorts of Inſurances upon other Sorts of Things in the Nature of Wagers, or Bargains upon Contingencies, have been introduced; concerning which the Agreement of the Parties is the Rule which governs.

That a Man ſhall live ſuch a Time; that one Man ſhall outlive another: That a Voyage ſhall be performed in a given Time; that a Ship ſhall arrive at ſuch a Port before ſuch a Fair; and every other Contingency, may be inſured at a fixed Sum.

Many Merchants, with a View to their own Gain, as well as public Service, deſiring to engage in fitting out Privateers, the greateſt Expence of which conſiſts in the Outſet, the Victualling, the Stores, the Advance-money paid the Sailors, *&c.* they bethought themſelves whether they could divide the Riſk by Inſurance.

By the firſt Kind of Inſurance (Open Policies) they could not do it, becauſe there was no Cargo: And the Value of the Ship was not the Meaſure of the Owners Expence and Riſk.

They could not do it, according to the ſecond or third Kind, deſcribing any particular Voyage. The Way, therefore, taken was to inſure the Ship from all Perils enumerated, as a Privateer, *to cruize during a limited Time:* And ſuch Inſurance of Privateers is a modern Practice.

The very End of this Contract ſhews, that *the Capacity of the Ship to cruize notwithſtanding the Perils*, and

and not the Exiſtence or the Property of the Ship, at the End of the limited Term, is the Subject matter of ſuch an Inſurance: And this is not only the obvious Meaning of the Parties, to ſuch a Contract; but judicial Determinations have declared this to be the Senſe.

Inſurance for three Months, from the 21ſt *December* 1744, upon the *Salamander* Privateer, to any Port or Places whatſoever, *Intereſt or no Intereſt*, *free of Average*, &c. The Privateer was taken in the ſecond Month by a *French* Man of War; who took the Captain, and moſt of the Privateer's Men, with the Commiſſion and Proviſions, on board his own Ship, and was carrying his Prize into *France*. On the 25th of *February* the Privateer was retaken by an *Engliſh* Ship, which took the *Salamander* with her on a Cruize, and then carried her into *Liſbon*, where ſhe remained. —An Action was brought on the Policy, and a ſpecial Verdict found; upon Argument of which, the Court of King's Bench unanimouſly gave Judgment for the Plaintiff: And againſt this Judgment no Writ of Error was ever brought. *Pond* and *King*. See Page 239.

Inſurance on a Privateer for two Months.——In the firſt Month ſhe was taken by the Enemy, and retaken by Admiral *Martin*; who, before the End of the firſt Month, ſent her into *Briſtol*. The Privateer had received no Damage in the Engagement in which ſhe had been taken, but what might have been repaired without any great Expence, if ſhe could have been put into a Dock: But when ſhe arrived at *Briſtol*, the Docks were full, and Workmen ſo ſcarce, that ſhe could not be repaired before the Term in the Policy expired. The Plaintiffs brought their Action: The Defendant inſiſted, that, the Ship exiſting (he not having inſured againſt the Fullneſs of Docks and Scarcity of Workmen) he could not be liable for a Loſs: Yet, as the two Months Cruize was loſt by a Peril within the Policy, the Plaintiffs had a Verdict.

Jenkins

Jenkins and *Roberts* againſt *Mackenzie*. *Mich.* 23 *Geo.* 2. 1749. See P. 228.

An Action upon the very ſame Policy now in queſtion againſt another Underwriter, in which the Plaintiff declared *verbatim*, *as in this Caſe*. A Verdict for the Plaintiff, by a ſpecial Jury, agreeable to the Direction of the Court. Judgment accordingly. The Defendant brought a Writ of Error; but, deſpairing of Succeſs, ſuffered it to be non-proſs'd, and paid the Money and Coſts. *Fitzgerald* and *Wainhouſe*, 23 *Geo.* 1749. *K. B.*

The Legiſlature has conſidered the Inſurance of Privateers as beneficial, and plainly underſtood that the Exiſtence of the Ship was not the Subject-matter of the Inſurance.

An Act of 19 *Geo.* 2. which prohibits Inſurances, Intereſt or no Intereſt, provides, that Aſſurance on private Ships of War, fitted out by any of his Majeſty's Subjects *(ſolely to Cruize)* againſt his Majeſty's Enemies, may be made, by or for the Owners thereof, Intereſt or no Intereſt, *free of Average*, and without Benefit of Salvage to the Aſſurers.

There was no Occaſion to except the Caſe of Privateers, had the Exiſtence of the Ship been looked upon as the only Object; the Value of the Inſurance might have been confined to the Intereſt in the Ship.

Upon ſome of the Reaſons and Authorities above referred to, as well as others, the Court of King's Bench gave Judgment in this Caſe for the Plaintiff.

The Objections to the Judgment of the Court of King's Bench, principally relied upon, ſeem to be theſe:

1ſt Objection. As the Ship exiſted at the End of four Months, nothing was to be paid; the Inſurers only undertaking, that *the Ship* ſhould not be totally loſt, or deſtroyed within that Time.

Anſwer. This Objection proves, that if, during the whole four Months, the Ship had been by Force turned

ed into a Fire Ship or Tranſport; detained in Port by an Embargo; taken and kept by Privateers; arreſted and detained by Princes; ſo diſabled in a Storm the firſt Day, as not to be capable of going to Sea during the Time; provided the Owners had the Ship or her Hull again, the Inſurers were to pay nothing; which, beſides contradicting ſo many Principles and Authorities, proves more than will be ſeriouſly contended for, and drives the Reſpondent to another Objection.

2d Objection. Suppoſe the Meaning was to inſure the Ship's Capacity to cruize (notwithſtanding the Perils mentioned) during four Months: Yet unleſs ſhe was prevented by any of the Means mentioned in the Policy, during the whole Time, nothing is to be paid; for the Inſurance muſt be taken to be only againſt the intire Loſs of the whole Time, but here, in this Caſe, the Ship cruized Part of the Time.

Anſwer. At this Rate of arguing, if the Ship was ſafe at any Time on the 15th *June*, there never could be a Loſs afterwards. Though the Ship had been burnt, ſunk, or taken, on the 16th, the Inſurers would not be liable; which, beſides contradicting all the Authorities in the Caſe of Privateers (in every one of which the Ship had cruized ſome Time) reduces the four Months to the firſt Inſtant of that Time; and therefore is a flat Contradiction to the expreſs Terms of the Policy.

3d Objection. If the Ship's Capacity to cruize, and not the bare Exiſtence of the Ship, was the Thing inſured, it is not found that *Peter Joyce* had any Intereſt in the Cruize; only that he was Owner of, and had Intereſt in the Ship during the Cruize.

Anſwer. The Property of the Ship carries an Intereſt in her Capacity to cruize. A publick Law, having given Prizes taken by Privateers, to and among the Owner or Owners of ſuch Ship or Veſſel, and the ſeveral Perſons that ſhall be on board the ſame, in ſuch Shares and Proportions as ſhall be agreed on with the Owner or Owners of ſuch Ship or Veſſel:

And

And to ſuppoſe the Owner to have parted with his whole Intereſt in the Uſe of the Ship during the Cruize, and yet to have retained his Intereſt in the Privateer during the Cruize, is to make an Intendment contrary to the Averment in the Declaration, and finding of the Verdict; and to ſuppoſe a Caſe which never exiſted in Fact, that the Owner of a Privateer lets her out, on Freight, to cruize as a Privateer.

The Parties on this Contract have agreed, and underſtood, that the Uſe of this Ship was attendant upon the Property: For they have inſured the Ship's Capacity, and valued it on the Ship.

There have been judicial Determinations, and one upon this very Policy, in Favour of what the Plaintiff in Error contends for, unreverſed and unappealed from. People probably have tranſacted Loſſes upon their Authority, and entered into Contracts, according to the Senſe judicially received. In mercantile Contracts, eſpecially for the ſake of Certainty, it is better to adhere to Deciſions, even if they were at firſt erroneous. All new Contracts are made in the Senſe of the judicial Determinations: And, ſuppoſing an Interpretation at firſt wrong, it becomes afterwards unjuſt to vary from it, and highly inconvenient.

Reaſons for the Defendant in Error.

1. The Inſurer being by the Terms of the Policy, *free from all Average*, the Plaintiff could not be intitled to recover, but in Caſe of a total Loſs; and the Ship being found by the ſpecial Verdict, to be in good Safety, at her proper Port, at and after the End of the four Months for which the Inſurance was made, there could be no ſuch Loſs.

2. *The Ship alone is inſured, and not the Cruize*; and to contend otherwiſe is not only contrary to the expreſs Words, and plain Meaning and Intention of the Policy, by which the Ship alone is repeatedly expreſſed to be the Thing inſured; but it is alſo contrary

trary to the Nature of an Inſurance; the Safety of the Ship itſelf, or of whatever elſe is the immediate Object of the Inſurance, being the only Thing inſured; and not any uncertain Benefit which may ariſe to the Owner by Means or in Conſequence of it: Nor can any ſuch conſequential Benefit be properly the Subject-matter of Inſurance, as it is not capable of being eſtimated. But,

3. Suppoſing the Cruize, or the Benefit of the Cruize, or the free Uſe of the Ship for the Cruize, to be the Thing inſured; yet even of any of theſe there is no Loſs; the Ship having actually cruized till within about a Fortnight of the whole Time, and having taken a rich Prize of the Value of 4200 *l.* Sterling. And,

4. Suppoſing, as contended for by the Plaintiff, that the Cruize, or Benefit of the Cruize, or the free Uſe of the Ship for the Cruize, was the Thing inſured; and that what is found by the Verdict amounts to a total Loſs of any of theſe; yet it is not found, nor is it averred in the Declaration, that *Peter Joyce*, for whoſe Benefit the Inſurance was made, had any Intereſt in the Cruize, but only in the Ship itſelf; and to recover in an Action upon a valued Policy, the Plaintiff muſt aver an Intereſt in his Declaration, and prove it at the Trial. *Mag. In.* Vol. 1. P. 533. *Fitzgerald* againſt *Pole*. *In Domo Procerum.* Here follows the Judgment.

Die Veneris 1*mo. Martii* 1754.

Whereas, by Virtue of his Majeſty's Writ of Error, returnable into the Houſe of Lords in Parliament aſſembled, a Record of the Court of Exchequer-Chamber was brought into this Houſe, the 18th Day of *December* 1753, wherein *George Fitzgerald* is Plaintiff, and *Charles Pole* Defendant; and Counſel having been heard, as well on *Wedneſday* the 20th of *Februery* laſt, as on the *Thurſday* and *Friday* following, to argue the Errors aſſigned upon the ſaid Writ of Error; and the Judges who were ordered to attend, having

having been heard *Seriatim*, as well on *Wedneſday* laſt as this Day, to deliver their Opinions, with their Reaſons, upon certain Points of Law to them propoſed, and due Conſideration had of what was offered on either Side in this Cauſe: It is ordered and adjudged by the Lords ſpiritual and temporal in Parliament aſſembled, that the Judgment given in the ſaid Court of Exchequer-Chamber, reverſing a Judgment given in the Court of Kings Bench, be, and the ſame is hereby affirmed; and that the Record be remitted. And it is further ordered, that the Plaintiff in Error do pay, or cauſe to be paid to the Defendant in Error, the Sum of 5 *l.* for his Coſts in this Houſe.

A. C. Cler. Parl.

Remarks on the preceding Caſe.

Firſt, in our humble Opinion, the chief Thing neceſſary to the forming of a right Judgment of the Caſe was to ſhew wherein the Words of this Policy differed from thoſe of other Policies made at Intereſt or no Intereſt; on which, in Caſes ſomewhat like this, Inſurers had formerly been obliged to pay total Loſſes. For it appears to us, that when this Caſe was heard, it was not ſufficiently explained to the Judge and the Jury, that although it is ſaid in this Policy that the Aſſurers ſhould *be free of Average*, it is not ſaid therein that the Inſurance ſhould be *without Benefit of Salvage*; which Clauſe conſtitutes the main Difference between Policies made on Intereſt or no Intereſt, and thoſe made on real Intereſt; a Renunciation of the Salvage being never made in the latter. Hence on Ships inſured at Intereſt or no Intereſt once taken, although afterwards retaken, the Inſurers have been condemned to pay total Loſſes, becauſe they renounced the Benefit of Salvage. In Inſurances made at Intereſt or no Intereſt, *free from Average and without Benefit of Salvage* (which, though they are very hazardous, high Premiums will tempt Inſurers to underwrite) the Words of the Policies clearly import, that ſuch

Inſurances are to be underſtood merely as Wagers, that the Ships ſhall make the Voyages mentioned in the Policies, and the Inſurers ſhall have nothing to do with Averages or Salvages. If in the preſent Caſe the Policy had been made with this Condition, "not "to have any Benefit of Salvage," probably the Court of Exchequer, conſidering the literal Senſe of the Words, and the former Deciſions on ſuch Policies, might have confirmed the Sentence given in the Court of King's Bench, condemning the Inſurers to pay a total Loſs; ſince the Ship, for the Time the Mutineers were Maſters of her, might be eſteemed as loſt to the Owners, and the Inſurers had renounced the Salvage.

2dly, With regard to the Caſe of *Pond* and *King*, cited by the Plaintiff's Counſel, where a Ship being taken, though afterwards retaken, the Inſurers were condemned to pay a total Loſs, who obſerve that in the preſent Caſe of *Fitzgerald* and *Pole*, it is only ſaid, that it was an Inſurance *loſt or not loſt, free from all Average*, In *Pond*'s Policy (See P. 240.) after the Words *to be free of Average*, follow *and without Benefit of Salvage*, which this Policy has not. We alſo find in ſome of the other Caſes of Intereſt or no Intereſt Policies, alledged here, that a Stop is made after the Words *free of Average*; and perhaps they might contain the other Condition alſo, *without Benefit of Salvage*; ſo that all thoſe Policies might differ from the preſent one, and prove nothing in its Favour.

In the Argument for the Plaintiff it is ſaid; "The "general Queſtion is, whether an Event has hap- "pened upon which the Underwriters by the Terms "of the Policy are to pay?"

Now it muſt, we think, be allowed that ſomething did happen for which the Inſurers had made themſelves anſwerable, and that was the Baratry of the Mariners. For the Mutiny of the Mariners, and their actually taking the Command from the Maſter, was certainly Baratry; and the Ship, during the Time ſhe remained out of the Power of the Captain,

might be conſidered as loſt to the Owners; but as the Mutineers carried her back to *Jamaica*, and there left her, and the Benefit of Salvage was not given up by the Inſurers, it was no total Loſs, and nothing elſe could be demanded, than what was proved to have been loſt by the Mutiny. Now as it appears that the Crew actually ran away, within the Term for which the Ship was inſured, with Part of her Fire-arms and Boats, Things expreſly mentioned in the Policy, and included in the Valuation of the Ship, how much or how little ſoever this might amount to, it certainly was no Average, but a partial Loſs for which the Inſurers were liable to pay: And though we are ſenſible that the Inſurers had nothing to do with the Succeſs or Miſcarriage of the Cruize, yet, as it well known to every Inſurer that the Amount of the Proviſions put on board for the Uſe of the Voyage, and the Money advanced to the Sailors, are uſually included and inſured in the Valuation of the Ship, it is a Queſtion with us, whether the Conſumption of the Proviſions by the Mutineers, whilſt they had the Command of the Ship, and neglected the Service of the Owners, ought not be conſidered as a Loſs to the Owners, which the Inſurers are to make good?

Thus much we have thought proper to alledge for and againſt the Defendant's Caſe.

As to the Defendant's Caſe, it may be obſerved that one of the Reaſons alledged for affirming the Judgment of the Court of Exchequer, is, that the Inſurers being by the Terms of the Policy *free from all Average*, the Plaintiff could only be entitled to recover in Caſe of a total Loſs. But in our Opinion the Inference is not juſt; for the Stipulation to be free from Average did not make them free from the actual Loſs ſuſtained by Baratry and Mutiny, which were never comprehended under the Word *Average*. Though inſerting a Clauſe in Policies on Privateers, not to be liable to bear any Loſſes reſulting from the Mutiny and Diſobedience of the Crews, may be a very

very prudent Conſideration for the Inſurers in Time to come, it was not done in this Caſe, where, by the Words *to be free of Average*, could only be meant that the Inſurers ſhould be free of all Damages reſulting from the Cruize, particularly what the Ship might ſuſtain either in attacking or being attacked, crowding Sail, or chacing, and thereby loſing or breaking any Thing, Damage ſuſtained by boarding, running foul of other Veſſels, receiving Shot in her Hull and Rigging, *&c.* We make no Doubt, but that if a ſeparate Demand had been made by the Inſured for the Things run away with by the Mariners, the Inſurers would have paid it.

Miſinformation perhaps led the Inſured to try whether this valued Policy would not have the ſame Effect as other Policies made on Intereſt or no Intereſt with the Conditions *to be free of Average, and without Benefit of Salvage*, by Virtue whereof the Inſurers had, in a parallel Caſe, been condemned to pay a total Loſs; and it ſo happened that the Jury miſunderſtanding the Thing, on the firſt hearing of this Cauſe in the Court of Kings Bench, gave a Verdict for a total Loſs. *Mag. Inſ.* Vol. 1. P. 559.

66. The Plaintiff cauſed himſelf to be inſured, on the *Prince Frederick*, from *Vera Cruz* to *London*, Intereſt or no Intereſt, free of Average and without Benefit of Salvage.

The Ship was afterwards ſeized, by Order of the Viceroy of *Mexico*, and the *Spaniards* turned her into a Man of War, called her the *St. Philip*, and ſent her as Commodore, with a Squadron of *Spaniſh* Men of War to the *Havanna*, they having firſt taken out the *South Sea* Company's Arms, and made ſeveral Alterations in her, and there was a War between *England* and *Spain*, and *Gibraltar* was actually beſieged by the *Spaniards*.

The Defendants proved the ſigning of preliminary Articles of Peace, before the Seizure of the Ship, and therefore inſiſted, that this Seizure did not alter the Property, and conſequently the Defendants were

not liable; for if the Property was not altered, this Insurance made by the Plaintiff, who had no Interest, cannot bind, as nothing comes within the Policy but a total Loss; and though there be these general Words in the Policy, *Restraint or Detainment by Princes*, *Hardwicke*, Chief Justice, declared, 1st, That a War, might begin without an actual Declaration by Proclamation, as in this Case by laying Siege to *Gibraltar*, a Garrison Town; though there might be Depredations at Sea between Princes in Amity, for which Letters of Marque, *&c.* might he granted. 2dly, As a War may begin by Hostilities only, so it may end by a Cessation of Arms; and these preliminary Articles being signed before the Seizure of the Ship, and there being a Cessation of Arms, he thought the Ship being taken afterwards, not to be a taking by Enemies, unless the Jury took the Caption to begin from the Time the Arms were seized, which was before the Articles, and that was left to the Jury. 3dly, Supposing the Ship not taken by Enemies, *Quare*, whether this Detention for near the Space of a Year, was in those Sorts of Policies, *viz. Interest or no Interest*, a Detention within the Policy, or whether in such Policies, the Insurers are ever liable, but in Case of a total Loss; and if so, this Ship being afterwards restored, then he directed the Jury to find for the Defendant; this, he said, depended on the Custom or Usage among Merchants; and the Jury gave a Verdict for the Defendant, but did not declare upon what Point; but they must be of Opinion, she was not seized in Time of War, and that therefore the Policy being *Interest or no Interest*, the Assurers were not liable, because there was no total Loss.

In this Case, the Insurance was made by one *Deflores* for the Plaintiff, and *Deflores* wrote his Name on the Policy, and before the Trial it was filled up with these Words, *I made this for the Benefit of* Spencer, and no Date, and it was admitted the Action was well brought by *Cestui que Trust*. *Lex. Mer. Red.*

Red. 287. *Spencer* and *Franco*, at *Guildhall*, 15 *Dec.* 1736.

67. By the Law of Nature, in War thoſe Things are acquired to us, which are either equal to that, which being due unto us, we cannot otherwiſe obtain, or elſe is ſuch a Mark as does infer Damage to the guilty Party by a fit Meaſure of Puniſhment; and by the Law of Nations, not only he that wages War on a juſt Clauſe, but every one in ſolemn War, and without End and Meaſure, is Maſter of all he taketh from the Enemy in that Senſe, that by all Nations, both himſelf and they that have Title from him, are to be maintained in the Poſſeſſion of them; which as to external Effect we may call *Dominion*. *Cyrus*, in * *Xenophon*. "It is an everlaſting Law among "Men, that the Enemies City being taken, their Goods "and Money ſhould be the Conqueror's; for the Law "in that Matter is a common Agreement, whereby the "Things taken in War become the Taker's." From the Enemy are judged to be taken away thoſe Things alſo which are taken away from the Subjects of the Enemy, and Goods ſo taken cannot *by the Law of Nations* be properly ſaid to be taken, but when the ſame are *out of all probable Hopes of Recovery*, that is, as † *Pomponius* obſerves, *brought within the Bounds or Guards of the Enemy*; *for*, ſays he, *ſuch is a Perſon taken in War, whom the Enemies have taken out of our, and brought within their Guards, for till then he remains a Citizen.* And as the Law of Nations is the ſame Reaſon of a Man, ſo likewiſe of a Thing; and therefore Goods and Merchandize are properly ſaid to be the Captor's, when they are carried *infra præſidia* of that Prince or State, by whoſe Subjects the

* De Inſtit. Cyri, 7.

† In bello, cum hi, qui nobis hoſtes ſunt, aliquem ex noſtris ceperunt et intra præſidia ſua perduxerunt; nam ſi eodem bello is reverſus fuerit, poſtliminium habet, id eſt perinde omnia reſtituuntur ei jura, ac ſi captus ab hoſtibus non eſſet. Antequam in præſidia perducatur hoſtium manet civis. Digeſtorum, lib. 49. Tit. 15. parag. 5.

ſame were taken, or ‡ *into the Fleet, or into a Haven, or ſome other Place where the Navy of the Enemy rides*: For then it is that the Recovery ſeems to be paſt all Hope. And therefore the *Common Law* of this Realm calls ſuch a Taking a ‖ *Legalis Captio in Jure Belli*, and in 7 *R.* 2. an Action of Treſpaſs was brought for a Ship, and certain Merchandize taken away, the Defendant pleaded that he did take them in *le haut Mere ou les* Normane *queut ſont enemies le roy*: And it was adjudged that the ſame Plea was good. And in the Year 1610, a Merchant had a Ship and Merchandize taken by a *Spaniard* being an Enemy; a Month after a Merchantman, with a Ship called *the little Richard*, retakes her from the *Spaniard*: It was adjudged that ſuch a Poſſeſſion of the Enemy, diveſted the Owner of his Intereſt, and the retaking afterwards in Battle gained the Captors a Property. *Molloy*, B. 1. C. 1. §. 12. cites *M.* 8 *Jac. B. R.* 2 *Brownl.* 11. 7 *Ed.* 4. 14. a. 24 *Ed.* 3. 16, 17.

68. It is true, the Civilians do hold, that it is not every Poſſeſſion that qualifies ſuch a Caption, and makes it become the Captor's but a firm Poſſeſſion, that is, when the Prize doth *pernoctare* with the Enemy, or remains in his Poſſeſſion by the Space of 24 Hours; but as this is a new Law, ſo it is conceived to be againſt the antient Judgments of the Civil Law, as well as the modern Practice of the Common Law: For the Party in the antient Precedents doth not mention by his Plea, that the Prize did *pernoctare* with the Enemy, but generally that the ſame was gained by a Battle of the Enemy. *Molloy*, B. 1. C. 1. §. 13. cites 7 *R.* 2. Treſpaſs *Statham*, Pl. 54.

69. After Notice of Loſs, the inſured, either becauſe he hath inſured the moſt of his Adventure, or in order to have the Aſſiſtance of the Inſurers, when there is hope of recovering the Adventure, may

‡ *Hales's* Hiſt. Pl. Cr. P. 163.

‖ 2 R. 3. Fo. 3. 7 *R.* 2. Treſpas. *Statham*, Pl. 54.

make

make a Renunciation of the Lading to the Inſurers, and then he comes in himſelf in the Nature of an Inſurer, for ſo much as ſhall appear he hath born of the Adventure beyond the Value Inſured.

But if the Merchant ſhall not renounce, yet there is a Power given in the Policy for them to travel, purſue, and endeavour a Recovery (if poſſible) of the Adventure, after a Misfortune; to which the Aſſurers are to contribute, the ſame being but a Trouble to give Eaſe to the Inſurers. *Molloy*, B. 2. C. 7. §. 15. cites *Locinus*, L. 2. C. 5. §. 8.

November 23d, 1758. In the King's Bench, *Goſs* and *Withers*.

70. This was an Action on two Policies of Inſurance, dated 26th *September* 1756; one on the Ship *David and Rebecca*, and the other on the Goods on board the ſaid Ship. She was bound from *Newfoundland* to the *Streights* or *Liſbon*, and inſured until ſhe was twenty four Hours arrived at the Port of her Diſcharge; and both the Ship and Cargo were valued at the Sum ſubſcribed: And it was agreed that in Caſe of Loſs it ſhould be lawful for the Inſurers to purſue, labour, travel, *&c.* for the Recovery of any Part, and that the Loſs ſhould be conſidered as an Average Loſs; and if the Ship ſailed with Convoy two Guineas of the Premium to be returned.

On the 30th *December* 1756, ſhe was taken by the *French*, and together with the Maſter, Mate, and all the Sailors, carried into *France*, and after ſhe had been in the Cuſtody of the *French* eight Days, ſhe was retaken by an *Engliſh* Privateer, and on *January* 18, 1757, brought into *Milford* Haven.

It was proved that Notice of her Arrival at *Milford* Haven was given to the Inſurers, and that the Owners intended to abandon her; and that *afterwards* the Cargo, which conſiſted of periſhable Goods, was ſpoiled.

Two Queſtions were made at the Bar:

1ſt, Whether this Capture of the Ship was not ſuch a Loſs of her or the Property ſo altered, as to make the Inſurers liable? And,

2dly, Whether the inſured had not a Right to abandon her?

And after two Arguments the Lord Chief Juſtice delivered the Reſolution of the whole Court, and ſaid, that it was not neceſſary to confine the Caſe to theſe two ſpecific Queſtions; but that the general Queſtion was, whether the Owners had on the 18th of *January* 1757, a Right to recover the Value of the Ship and Cargo from the Inſurers on abandoning them? for that as the Plaintiff hath then offered to abandon, nothing that hath ſince happened can alter his right.

That the firſt Point argued was totally immaterial, that is, whether by this Capture the Property was tranferred according to the Law of Nations; for this Queſtion can ariſe but in two Caſes, 1ſt, Between an Owner and a neutral Nation; and 2dly, Between an Owner and a Recaptor.

That the general Rule as to changing of Property was that of the *Civil Law*, *ea quæ ex hoſtibus capimus* ſtatim *noſtra fiunt**:——That nothing is taken till the Fight is over, and the Fight is not over until the Purſuit is over; and that this was the proper Definition of a Capture.

That ſeveral Writers have drawn various Lines by arbitrary Rules; which States from equitable Conſiderations have altered; but the Subject is merely arbitrary, and does not depend upon Reaſon: Some have ſaid that a Ship is taken, when carried *infra hoſtium præſidia*, when in Cuſtody within their Strong Holds. Others, as *Grotius*, *Law* 14, have made twenty four Hours the Criterion; and others ſay that a Ship is taken when carried into the Enemy's Port.

That he had taken the Trouble to ſpeak to Sir *George Lee* to inform himſelf of the Practice of the Court of Admiralty on theſe Occaſions, and was in-

* That is, What we take from the enemy *immediately* becomes our Property.

formed,

formed, that it was there held, that the Property was not diveſted, ſo as to change the Owner, till the Ship was condemned and ſold; and mentioned a Caſe determined there in 1695, where a Ship was taken fourteen Weeks, ſold twice, made ſeveral Voyages, and yet was reſtored to the Owners, becauſe not condemned; but whatever Favour may be ſhewn as between Vendor and Vendee, that cannot affect an Inſurer; for he muſt pay the Value though the Ship be retaken; and whether the Ship be condemned or not, he muſt bear the Loſs actually ſuſtained.

That another Queſtion made was, whether the Inſured had their Election to abandon. This was a Policy on a real Intereſt.——The Ship was diſabled to continue the Voyage; the Freight was loſt, and what could be ſaved not worth the Expence of purſuing it; and that all the Books agreed that the Inſured may, under ſuch Circumſtances, abandon to the Inſurers.

That every Argument applicable to the Ship held good as to the Goods.——The Cargo was periſhable, and the Voyage defeated.——

That the Act of Parliament * did not ſuſpend the total Demand, but put the Inſurers in the Place of the Inſured; and that in the preſent Caſe the Loſs was total at the Time of the Capture, and continued total, and there is no Colour to ſay, that the Property was not diveſted;—it might as reaſonably be ſaid that the Property was not altered, if a Ship was ſunk and two days after weighed up again.——All of Opinion that the Loſs was total by the Capture, and that the Inſured had a Right to abandon.

71. Policy of Aſſurance to warrant a Ship for twelve Months; the Ship did not periſh within the Time of twelve Months, being accounted Calendar Months, as *January*, *February*, &c. but within twelve Months, reckoning twenty-eight Days to the Month. Reſolved that the Policy was not forfeited. Cited in Sir *Woollaſton Dexey*'s Caſe. 1 *Leon.* 96. *Molloy*, B. 2. C. 7. §. 3.

* Prize Act of 1756.

72. This

72. This was an Action upon the Caſe upon a Policy of Inſurance brought by Plaintiff againſt the *Royal Exchange Aſſurance Company*. The Policy is dated 31ſt *October* 1753, on the Ship called the *Onſlow*, and was to inſure the ſaid Ship from her ſailing out of the River *Thames*, to all Places beyond the *Cape of Good Hope*, and back again, and until ſhe is moored 24 Hours in the River *Thames*. The Policy is upon the Body, Tackle, Ordnance, and Apparel of the Ship. The Perils inſured againſt are thoſe of the Seas, Men of War, Fire, and then the general Words, *&c.* The Ship ſailed the 27th of *December*, 1753, upon a *China* Voyage, and arrived at *Canton* the *September* following.

When the Captain got there, he took out the Sails and Tackle, the better to refit his Ship, and laid them up in a *Bank-Saul*, upon an Iſland called *Bank-Saul Iſland*: and it appears that this was the univerſal Cuſtom for all Ships trading a *China* Voyage ſo to do, and that it is prudent in the Captain to follow the common Cuſtom: The *Dutch* being the only *Europeans* not permitted to refit here: And the Cauſe of their being excluded, was, for attempting to build a Fort there; and it is a great Diſadvantage to them not to be allowed this Privilege. A Fire happened in the *Bank Saul*, belonging to a *Swediſh* Ship, which communicating, burned the *Bank-Saul* where the Tackle of the *Onſlow* was laid up. The Ship returned in *September* 1755. The Damage amounted to 167*l.* 16*s.* 7*d.* Theſe Facts being found by a Jury, a Queſtion was made for the Opinion of the Court, *viz.* Whether the Inſurers have inſured it from this Accident?

It was argued for the Plaintiff, that theſe Kinds of Contracts appear to be of very ancient Date, introduced to encourage a foreign Commerce by all the States of *Europe*.

The Words of the Policy run, that the Defendants inſure againſt all Accidents till the Ship returns

to

to the Port of *London*; and it is ſet forth that it is the Cuſtom for thoſe Ships trading to thoſe Parts, to refit in the Manner ſhe has done. The Inſurers computed the Riſque, and had this Uſage under their Conſideration at the Time of the Inſurance. The Rigging was burned, not by Neglect, but accidental Misfortune. The Queſtion is, Who ſhall bear the Loſs? He who receives a Premium for inſuring againſt Fire, ought to repair any Loſs which happens by Fire. If the Body of the Ship had been burned, without Doubt, the Inſurers would have been liable only for the Ship, and might deduct the Value of the Sails; therefore in Equity, ſince they would have received an Advantage in one Caſe by the Captain's Conduct, they ſhould pay in the preſent Caſe. It is incumbent on the Defendants to ſhew this Caſe not to be within the Words. *Sa'keld* 445. *Bond* v. *Gonſales*. Where the Queſtion was, whether the Loſs be within the Words. The Uſage of ſuch Voyages have been always conſidered, and the Reaſon is plain; for the Inſurers have under their Conſideration, all the Riſques according to the uſual Voyages. In the Caſe of *Tierney* v. *Ethrington*, at *Guildhall* 1743. *Lee* Chief Juſtice ſaid, that in Conſtructions of Policies *ſtrictum jus*, is not to be inſiſted upon; and that, for the Benefit of Trade. The Caſe of *Tierney* and *Etherington*, as well as I could collect, was a Caſe brought for Goods loſt out of a Boat as they were carrying from the Ship to the Shore. The Method of unloading is the Means of attaining the End deſigned by the Policy. In the Caſe of *Tierney* and *Ethrington*, it was not within the Words of the Policy, but Intent. Where there is an Inſurance of a Ship for one intire Voyage, there muſt not be a *ſuſpenſion* for a Time. Therefore if a Ship ſtays an unreaſonable Time in Port, the Contract is determined not ſuſpended. When the Maſter puts in at the uſual Ports, he is not obliged to ſay he did it *ex neceſſitate*, otherwiſe he muſt.

Defendant's

Defendant's Counſel urged, that this is a new Caſe, and reſerved it therefore for the Opinion of the Court. Many Things advanced by Plaintiff's Counſel are right, many taken in too large a Senſe. The Doctrine in ſuch Caſes ought to be uniform, certain and ſtated, and determined upon fixed Principles, as they are to extend to all Nations. I agree, the Inſurers are ſubject to all the Perils in the Courſe of the Voyage; and that in all mercantile Matters, the Intent of the Parties is to be conſidered. The Policy is upon the Body of the Ship, and the Loſs is confined to Loſſes at Sea; whereas here it is Part of the Declaration, that it is a Loſs at Land. It is a Policy from *London* to all Parts beyond the *Cape of Good Hope* and a return Home.

Put the Suppoſition made by Plaintiff's Counſel of burning the Hulk, and ſaving the Sails, in other Words, and it will come out thus: What they have inſured, *viz.* the Hulk is loſt, and they muſt be anſwerable for it. What they have inſured, *viz.* the Sails is not loſt, and therefore they are not anſwerable for them.

Not an Article in the Caſe of *Tierney* v. *Ethrington* applicable to the preſent Queſtion. Inſurances have been long before the *Eaſt India* Company had a being.

If the Maſter takes the Sails from the inſured Ship, and puts them in another, where they are burned, the Inſurers are not anſwerable. The *Royal Exchange Aſſurance Company* by their Parliamentary Charter, cannot Inſure at Land. The Caſe of *Tierney* and *Ethrington*.. The 17th *G.* 2. is the only Caſe the Diligence of the Plaintiff's Counſel could find out; and in that Caſe, the Queſtion was not upon the general Uſage of Policies, but upon a particular Agreement. It likewiſe differs from the preſent Caſe, becauſe it was clearly a Peril at Sea.

In the Caſe of * *Pole* v. *Fitzgerald*, an Inſurance of a Ship in a Cruize, in all Latitudes, and in all

* See P. 251.

Places,

Places, for three Months. The Court was of Opinion, that nothing but the Cruize was under Conſideration; and the Houſe of Lords conſidered the Words of the Policy, and not the Intent of the Parties. The Doctrine I have laid down, is not liable to any Inconveniencies, as the Parties may expreſs in their Policies any Thing unuſual.

The Plaintiff's Counſel in Reply: The Caſe in Queſtion is upon the Rigging, which by the Common Uſage is generally carried on Shore, as well as left upon the Body of the Ship. This Loſs falls within the very Words of the Policy; for the Declaration mentions the Loſs happening between the Time of ſailing and returning. The kind of Neceſſity which may empower the Captain to go out of his Way is not ſuch, without which the Ship muſt inevitably periſh. As to the Objection, that by their Charter the *Royal Exchange Aſſurance Company* cannot Inſure any thing on Land. If the Riſque of Unloading, *&c.* had not been the uſual Courſe, it ought to be inſerted on the Foot of the Policy; and beſides the Merchants of the City of *London*, are not obliged to take Notice of the Charter of the *Royal Exchange Company*. The Company themſelves act contrary; for the Act only Means, that they ſhall not Inſure Houſes or Journies upon the Continent. The Caſe of *Tierney* and *Ethrington*, was not within the Words of the Agreement. And it was not inſiſted upon to be a Peril at Sea, rather the Contrary. It is certain, that the Policy is not determined, and that the Inſurers would have been liable, if the Ship had been loſt on her return Home. Plaintiff's Counſel ſaid, he would not be underſtood to ſay, that the Contract was determined as to the Rigging, but upon Land only; and that this Caſe was ſimilar to removing the Tackle from one Ship to another.

Chief Juſtice, after conſidering the Caſe ſome Days, delivered the Opinion of the Court: And after ſtating the Caſe, he ſaid the Queſtion was, whether

ther the Inſurers have inſured the Ship from this Accident; and it is their unanimous Opinion that they have; for by the Words of the Policy, Loſs by Fire is inſured againſt; And beſides, it is incumbent upon the Defendants to ſhew it a Loſs they did not intend to bear. From the Nature of theſe Kinds of Agreements, there is a ſettled Rule, *viz.* If the Chance or Voyage be changed by the Negligence of the Maſter, then the Inſurers are not liable. But they engage againſt all fortuitous Accidents. What was done in the uſual Courſe, or from Neceſſity, the Juſtices muſt have had under their Conſideration; and it is abſurd to ſuppoſe, that when the End is inſured, that the Means ſhould be excluded. If an Underwriter inſures Goods to the landing, he inſures them whilſt they are in a Boat between the Ship and the Land. If it is cuſtomary to go out of the Way, the Inſurers are certainly liable to all Accidents during that Deviation. The Caſe of *Bond* and *Gonſales*, cited from *Salk.* 445. ſettles this upon general Principles. *Tierney* and *Ethrington*, cited for Plaintiff, as ſettled at *Guildhall* by *Lee* Chief Juſtice, and afterwards agreed to by three Judges of this Court, was looked into, and found truly ſtated. What is uſually done in ſuch a Voyage, is as neceſſary as if included in the Words of the Policy. If the Maſter goes out of the Way to avoid Enemies or Pirates, it is the ſame as if he had been drove by Streſs of Weather. The only Objection made by the Defendants is, that the Loſs happened on Land, and being a Part of the Ship, and this Company only to inſure upon Sea, they are not liable. The Anſwer is very plain, the Words of the Policy do not exclude this. I ſuppoſe a Ship drove by a Hurricane on Land, and the Sea withdrew, and the Ship was burned, or the Tackle was taken out and burned. This is only a poſſible Caſe, and yet the Inſurers are liable. The Poſſibility of the preſent Accident muſt have been foreſeen at the Time of the Policy. If it had been an accidental Loſs, the Maſter might

might have excuſed himſelf. The *China* Voyage being deſcribed, it is equal as if the particular Accident, which has happened, had been deſcribed in the Policy. Defendant's Counſel was ſo preſſed by the Argument of Plaintiff's Counſel, that he was obliged to ſay, it was a Deviation; but if that were true, never was one Inſurance remaining on the Rigging, till the Return to *London*. The Caſe of changing the Tackle from one Ship into another, is it not applicable to the preſent Caſe; becauſe that is a difficult Undertaking and Chance, and it might be as well a difficult Voyage, and no more alike than an *American* Voyage upon a Policy to *China*. However, it is certainly true, that Policies are not to be extended to Caſes omitted. *Pole* v. *Fitzgerald*, is not applicable to the Caſe now before the Court. In the preſent Caſe, the Defendants knew the Ship would have been put in the *Bank-Saul*, and if aſked, would have inſiſted upon it, as being the moſt advantageous Method for them; and it would be a Deviation according to Juſtice and Equity, if the Tackle had not been put upon the *Bank-Saul*; therefore, upon the Whole, we are of Opinion, that the Defendants are liable by the Words of the Policy. Judgment for the Plaintiff. In the King's Bench *Eaſt.* 30 *Geo.* 2. *Kelly* againſt *the Royal Exchange Aſſurance Company*.

SECT. IX.

Of Bottomry Bonds.

1. BOTTOMRY is the Act of borrowing Money on a Ship's Bottom, by engaging the Veſſel for the Repayment; ſo that in caſe ſhe miſcarries, the Lender loſes his Money; but if ſhe finiſhes her Voyage, and arrives in Safety, the Borrower is to repay the Loan with a Premium or Intereſt agreed on (which is always adequate to the Riſk;) and if this

be

be denied or deferred, the Lender ſhall have the Ship *.

Bottomry is likewiſe called *fœnus nauticum*, *pecunia trajectitia*, and ſometimes *uſura marina*, though improperly; for notwithſtanding the Intereſt in theſe Contracts is always much larger than that the Law preſcribes for Monies lent on landed Securities, yet it is never accounted *Uſury*, as marine Loans are furniſhed at the Hazard of the Lender, which the others are not; and where the Riſk is greateſt on the advanced Monies, the Profit ought in Reaſon to be ſo too.

Money lent on Bottomry is commonly on the Ship only, though ſometimes it is upon the Perſon of the Borrower, and ſometimes on both. The firſt is where a Man takes up Money, and obliges himſelf that if the Ship agreed on arrives at ſuch a Port, then to repay the Loan, with the Intereſt ſtipulated; but, if the Ship miſcarry, then nothing †. But when Money is lent at Intereſt it is delivered at the Peril of the Borrower, and the Profit of this is merely the Price of the Loan; whereas the Profit of the other is a Reward for the Danger and Adventure of the Sea, which the Lender takes upon himſelf, and makes the Intereſt lawful. *Lex Mercat. red.* 123.

2. By Stat. 19 *Geo.* 2. C. 37. It is enacted, that after the 1ſt of *Auguſt* 1746, every Sum lent on *Bottomry*, or at *Reſpondentia*, upon any Subjects Ships to or from the *Eaſt Indies*, ſhall be lent only on the Ship, or the Merchandizes laden on board her, and ſo expreſſed in the Condition of the Bond; and the Benefit of *Salvage* ſhall be allowed to the Lender, his Agents, *&c.* who alone ſhall have a Right to make Aſſurance on the Money lent: and no Borrower of Money upon

* BOMERIE. Terme de commerce de mer, particulierement en uſage ſur les côtes de Normandie. Ce'ſt une eſpece de contract, ou de prêt à la groſſe avanture, aſſigné ſur la quille du vaiſſeau: differe de l'Aſſurance en ce qu'il n'eſt rien dû en vertu de ce contract, en ce cas de naufrage, mais ſeulement quand le navire arrive à bon port. *Savary.*

† Sea Laws, 206, 207.

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Bottomry, or at *Reſpondentia*, as aforeſaid, ſhall recover more on any Aſſurance than the Value of his Intereſt on the Ship or Effects, excluſive of the Money borrowed. And if the Value of his Intereſt doth not amount to the Money borrowed, he ſhall be reſponſible to the Lender for the Surplus, with lawful Intereſt for the ſame, together with the Aſſurance and all Charges, *&c.* notwithſtanding the Ship and Merchandize be totally loſt.

3. Stat. 19 *Geo.* 2. C. 32. Intitled an Act for amending the Laws relating to Bankrupts.

The Preamble obſerves that many Perſons within the Deſcription of, and liable to the Statutes concerning Bankrupts, frequently commit ſecret Acts of Bankruptcy, unknown to their Creditors, and other Perſons, with whom they had Dealings; and after committing thereof, continue to appear publickly, and carry on Buſineſs, by buying and ſelling of Goods, drawing, accepting and negotiating Bills of Exchange, and paying and receiving Money on Account thereof, in the uſual Way of Trade, and in the ſame open Manner as if they were ſolvent, and not become Bankrupt: And as the permitting ſuch ſecret Arts of Bankruptcy to defeat Payment really made in the Caſes and Circumſtances abovementioned, where the Perſon receiving the ſame had no Notice of, or were privy to their having committed any Act of Bankruptcy, will be a Diſcouragement to Trade, and a Prejudice to Credit in general; it is therefore enacted, that after 29th *October* 1746, no real Creditor of a Bankrupt in Reſpect of Goods ſold to, or Bills of Exchange really drawn, negotiated, or accepted by ſuch Bankrupt in Courſe of Dealing, ſhall be liable to refund to the Aſſignees of the Bankrupt's Eſtate any Money, which before the Suing forth of ſuch Commiſſion, was really in the Courſe of Trade received by him of ſuch Bankrupt, before he had Knowledge or Notice of his becoming a Bankrupt, or being in inſolvent Circumſtances.

And as Merchants and other Traders frequently lend Money on *Bottomry*, or at *Reſpondentia*, and cauſe their Veſſels with their Cargoes to be inſured; and where Commiſſions of Bankruptcy have iſſued againſt the Obligor, or Aſſurer, before the Loſs of the Ship or Goods hath happened, it hath been made a Queſtion whether the Obligee, or the Aſſured, ſhould be let in to prove their Debts, or be admitted to have any Benefit under ſuch Commiſſion, which may be a Diſcouragement to Trade: For Remedy whereof, it is enacted, that the Obligee in any *Bottomry*, or *Reſpondentia* Bond, and the Aſſured in any Policy of Inſurance, made, *bona fide*, upon a valuable Conſideration, ſhall be admitted to claim; and after the Loſs or Contingency, to prove the Debt thereon, in like Manner as if the ſame had happened before the iſſuing of the Commiſſion of Bankruptcy; and ſhall receive a proportionable Dividend of the Bankrupt's Eſtate; and every Bankrupt ſhall be diſcharged from the Debt on ſuch Bond and Policy of Inſurance as aforeſaid, and ſhall have the Benefit of all the Statutes againſt Bankrupts, in like Manner as if ſuch Loſs or Contingency had happened, and the Money due thereon had become payable, before the Time of the iſſuing of ſuch Commiſſion.

5. The Defendant had lent 300 *l.* on a Bottomry Bond, and afterwards inſured 450 *l.* on that Ship with the Plaintiff, for ſix Guineas *per cent.* Premium, as intereſted for Money lent, *&c.* The Ship outlived the Time at which the Money was payable, and afterwards was loſt in the *Eaſt Indies*. The Defendant recovered the Money on the Bottomry Bond, and afterwards ſued the Inſurers upon their Policy, who brought their Bill to be relieved, for that the Money inſured by the Policy was the Money lent upon the Bottomry, and that the Defendant was no otherwiſe intereſted in the Ship; and that the Money being paid, no Uſe ought to be made of the Policy. The Court decreed the Policy to be delivered up. 2 *Eq. Ab.* 371. *Trin.* 1692. *Goddart* and *Garret*.

S. C.

S. C. 2 *Vern.* 269. Where it is held, that a Perſon having no Intereſt but his Bottomry Bond, cannot inſure; that a Perſon who has no Intereſt in the Ship or Cargo cannot inſure, tho' the Policy was intereſted or not; but Inſurances are for the Benefit of Traders only, not that others unconcerned ſhould make unreaſonable Gain.

6. Where the Defendant lent the Plaintiff 250 *l.* on a Bottomry Bond, and afterwards inſured on the ſame Ship; but the Inſurance was larger as to the Voyage, there being Liberty to go to other Ports and Places than what were contained in the Condition of the Bottomry Bond. The Ship being loſt, the Defendant recovered the Money on the Policy of Inſurance, and alſo put the Bottomry Bond in Suit. The Ship, tho' loſt, having deviated from the Voyage mentioned in the Bond, the Plaintiff brought his Bill, pretending the Defendant ought not to recover both on the Inſurance, and alſo on the Bond, he having inſured only in reſpect of the Money he had lent on the Bottomry. And therefore the Plaintiff would have had the Benefit of the Inſurance paying the Premium; but the Court held, that the Defendant having paid the Premium was intitled to the Benefit of the Policy; and the Inſurers might as well pretend to have Aid of the Bottomry Bond, and to diſcount the Money recovered thereon, as the Plaintiff to have the Money recovered on the Policy to eaſe the Bottomry Bond. *Mich.* 1716. *Harman* and *Vanhatton.* 2 *Vern.* 717.

7. The Plaintiff entered into a penal Bond of Bottomry to pay 40 *s. per* Month for 50 *l.* The Ship was to go from *Holland* to the *Spaniſh* Iſlands, and ſo to return for *England*; but if ſhe periſhed, the Defendant was to loſe his 50 *l.* She went accordingly to the *Spaniſh* Iſlands, took in *Moors* at *Africa*, and upon that Occaſion went to *Barbadoes*, and then periſhed at Sea; the Plaintiff, being ſued on the Bond and Penalty, pretended that the Deviation was on Neceſſity: But his Bill was diſmiſſed, ſaving as to the Penalty. 2 *Chan.* Cap. 130. *Vid.* 2 *Salk.* 444.

8. But where *J. S.* entered into a Bottomry Bond, whereby he bound himſelf, in Conſideration of 400 *l.* as well to perform the Voyage within ſix Months, as at the ſix Months End to pay 400 *l.* and 40 *l.* Premium, in caſe the Veſſel arrived ſafe, and was not loſt in the Voyage. And it fell out that *J. S.* never went the Voyage, whereby his Bond became forfeited; and he preferred a Bill to be relieved: And in regard the Ship lay all along in the Port of *London*, and ſo the Defendant run no Hazard of loſing his Principal, the Lord Keeper thought fit to decree, that the Defendant ſhould loſe the Premium of 40 *l.* and be contented with his ordinary Intereſt. *Mich.* 1684. *Deguilder* and *Depeiſter*. 1 *Vern.* 263.

9. A Part-owner of a Ship borrowed Money of the Plaintiff upon Bottomry Bond, payable on the Return of the Ship from the Voyage ſhe was then going in the Service of the *Eaſt India* Company. And the *Eaſt India* Company broke up the Ship in the *Indies*; and the Owners brought their Action againſt the Company, and recovered Damages; but they did not amount to a full Satisfaction. And the Obligee brought his Bill, to have his proportionable Satisfaction out of the Money recovered: But his Bill was diſmiſſed, and he left to recover as well as he could at Law; for a Court of Equity will never aſſiſt a Bottomry Bond which carries an unreaſonable Intereſt. *Mich.* 1701. *Dandy* and *Turner*. 1 *Equ. Abr.* 372.

10. Bill to be relieved againſt a Bottomry Bond, with Condition that if the Ship *S.* bound to the *Eaſt Indies*, ſhall return to *L.* within 36 Months, or if ſhe does not return within 36 Months, not being taken or loſt by inevitable Accidents within that Time, then the Money to be paid, *&c.* The Ship was detained in Port *Surat* in *India* by Embargo by the *Great Mogul*, ſo that ſhe could not ſail from *Surat* till after the 36 Months were elapſed, and in her Return Home was taken by the *French*; but, being after the 36 Months, the Bond was forfeited: But there being no Fault

Fault in the Maſter, and the Voyage delayed by inevitable Accident, *viz.* by the ſaid Embargo, the Bill prayed *to be relieved againſt the Penalty of the Bond.* *Harcourt* C. diſmiſſed the Bill, but without Coſts, ſaying, *he could not relieve againſt the expreſs Agreement of the Parties; but if the Defendant had inſured this Money upon the Ship, the Plaintiff ſhould have the Benefit of the Inſurance, upon allowing the Defendant the Charges of Inſurance, if the Plaintiff pays the Money within three Months.* *Vin. Abr.* Tit. *Bottomry Bonds* (A) Cap 9.

11. Debt upon an Obligation with Condition to pay ſo much Money, (which was more by a third Part than the legal Intereſt of the Money) if a Ship returned within ſix Months, from *Oſtend* in *Flanders* to *London*, and if ſhe do not return, then the Obligation to be void. The Defendant pleaded, that there was a corrupt Agreement between him and the Plaintiff; and that at the Time of making of the Obligation, it was agreed he ſhould have no more for Intereſt than the Law allowed, in caſe the Ship ſhould ever return, and avers that the Bond was entered into by Covin to avoid the Statute of Uſury. *Per Hale*, clearly, this Bond is not within the Statute; for this is the common Way of Inſurance, and if this were void by the Statute of Uſury, Trade would be deſtroyed; for it is a Caſualty whether ever ſuch a Ship ſhall return or not: But he agreed the Averment was well taken, becauſe it diſcloſed the Manner of the Agreement. *Hardres* 418. *Joy* againſt *Kent.* *Molloy*, B. 2. C. 7. §. 12.

12. Where *A.* lends *B.* 100*l.* to freight a Ship abroad, and they agree that if the Ship comes Home ſafe, *A.* ſhall have 150*l.* and that if ſhe do not, that he ſhall loſe the 100*l.* this is not Uſury, but good by the Cuſtom of Merchants; becauſe of the great Perils of the Sea, both Principal and Intereſt run the ſame Hazard of being loſt; but if the Principal be ſecured, and the Intereſt only depend on Hazard, if it be more than is lawful, it is Uſury. 2 *Rol. Rep.*

48. 5 *Co.* 70, *&c. Cro. Jac.* 208, 508. 1 *Keb.* 539, 711.

13. So where the Condition of a Bottomry Bond was, that if the Obligor, or the Ship, or the Goods return ſafe, then to pay more than the legal Intereſt; this was adjudged good by the Cuſtom of Merchants, tho' it depends on many Contingencies; and tho' the Obligee may be ſaid to run little Hazard; and tho' any of the Contingencies become impoſſible, as if the Obligor die before his Return, *&c.* yet the Bond remains payable, contrary to the general Rule of Law in ſuch Caſes: for the Law ſupplies theſe Words, *which ſhall firſt happen*, and foreclоſes the Election of the Obligor, and gives it to the Obligee to take his on which of the Contingencies ſhall firſt happen. 1 *Lev.* 54. 1 *Sid.* 27.

14. A Ship going in the Fiſhing Trade to *Newfoundland* (which Voyage muſt be performed in eight Months) the *Plaintiff gave the Defendant* 50 *l. to repay* 60 *l. upon the Return of the Ship to* Dartmouth; *and if by Leakage or Tempeſt ſhe ſhould not return in eight Months, then to pay the principal Money only; and if ſhe never returned, then he ſhould pay nothing.* All the Court held, that this is no Uſury within the Statute; for if the Ship had ſtaid at *Newfound and* two or three Years, he was to pay but 60 *l.* upon the Return of the Ship, and if ſhe never return, then nothing; ſo that the Plaintiff run a Hazard of having leſs than the Intereſt which the Law allows, and poſſibly neither Principal nor Intereſt. *Cro. J.* 208. *Pl. Trin.* 6 *Jac. B. R. Sharpley* v. *Sturrell. S. C.* cited by *Doderidge* J. *Cro. J.* 508, 509. Pl. 20. by the Name of *Dartmouth's* Caſe, where one went to *Newfoundland*, and another lent him 100 *l.* for a Year, to victual his Ship; and if he returned with the Ship, he was to have ſo many 1000 of Fiſh, and expreſſed at what Rate, which exceeded the Intereſt allowed by the Statute; and if he did not return then, he ſhould loſe his Principal, and adjudged no Uſury. *Vin. Ab.* Tit. *Bottomry Bonds* (A).

15. Debt

15. Debt upon a Bond of 300*l.* conditioned that *if such a Ship sailed to* Surat *in the* East Indies, *and returned safe to* London, *or if the Owner and his Goods returned safe*, &c. the Defendant should pay to the Plaintiff the principal Sum of 300*l.* and also 40*l.* for every 100*l.* But if the Ship should perish by any unavoidable Casualty of the Sea, Fire, or Enemies, to be proved by sufficient Evidence, *then the Plaintiff was to have nothing.* The Question was, Whether this was an usurious Contract? Adjudged that it was not, and that it was a good Bottomry Contract. *Bridgman* Chief Justice distinguished between a Bargain and a Loan; for if the Bargain is plain, and the Principal is in Hazard, it cannot be said within the Statute of Usury; but it is otherwise of a Loan, where it is intended that the Principal is in no Hazard; and adjudged *per tot. Cur.* for the Plaintiff, that this Contract is not usurious. *Sid.* 27. *Pl.* 8. *Hill.* 12 *Car.* 2. *C. B. Soome* v. *Gleem. Vin. Ab.* Tit. *Bott. Bonds*, A. 2.

16. A Master of a Ship hath no Power to take up Money by Bottomry in Places where his Owner or Owners dwell, unless it were only for so much as his Part comes to in the said Ship: Otherwise he and his Estate must stand liable to answer the same. But when a Master is out of the Country, and where he hath no Owners, nor any Goods of theirs, nor of his own, and cannot procure Money by Exchange or otherwise, and that for want of Money the Voyage might be retarded or defeated, Money may be taken up upon Bottomry, and all the Owners are liable thereunto: Otherwise, he shall bear the Loss, that is, the Owners are liable by their Vessel; and the Owners have their Remedy against the Master. But the Persons of the Owners are no ways liable by the Act of the Master for Money taken up. *Molloy*, B. 2. C. 11. §. 11.

17. It is certain, that the greater the Danger is, if there be a real Adventure, the greater may the Profit be of the Money advanced; though some seem to be

of Opinion, that any Profit or Advantage ought not to be made of Money ſo lent, no more than of that which is advanced on a Simple Loan, and on the Peril of the Borrower. However, all or moſt of the trading Nations of *Chriſtendom* do at this Day allow it as a Matter moſt reaſonable, on account of the Contingency or Hazard that the Lender runs; and therefore ſuch Money may be advanced ſeveral Ways; ſo that the Lender runs a Hazard. *Molloy*, B. 2. C. 11. §. 14.

18. There is another Way of advancing Money called *Uſura Marina*, joining the advanced Money and the Danger of the Sea together; and this is binding ſometimes upon the Borrower's Ship, Goods, and Perſon: The Produce of this will advance ſometimes to 20, 30, and ſometimes 40 *per Cent.* As for Inſtance: A private Gentleman has 1000 *l.* ready Money lying by him; and having Notice of an ingenious Merchant who has Credit beyond Seas, and underſtands his Buſineſs well, applies himſelf to him, and offers him 1000 *l.* to be laid out in ſuch Commodities as the Merchant ſhall think convenient for that Port or Country the Borrower deſigns them for, and that he will bear the Adventure of that Money during the whole Voyage (which he knows may be accompliſhed within a Year). Hereupon the Contract is agreed upon; 5 *per cent.* is accounted for the Intereſt, and 12 *per cent.* for the Adventure outwards, and 12 *per cent.* for the Goods homeward; ſo that upon the Return the Lender receives 29 *l. per cent.* And this cannot be Uſury by the Laws of this Realm, on account of the Riſk and Danger which the Lender runs. *Molloy*, B. 2. C. 11. §. 14.

SECT.

SECT. X.

Of Insurances on Lives.

1. MENS Lives with good Reasons are, and may be, insured, to secure to a Creditor the Reimbursement of a Sum advanced to his Debtor for purchasing a Post or Place; out of the Income of which he may have a Sufficiency besides his Maintenance, and Expences, and Interest, and Premium, to pay off yearly a Part of the Capital. However, the Lender ought not to insure the Life of the Borrower without his Consent. In some Places Insurances are not permitted on the Lives of Persons at the Head of Government*; but in *London* People take the Liberty to make Insurances on any one's Life without Exception; and the Insurers seldom inquire much if there are good or bad Reasons for such an Insurance, but only what the Person's Age is, and whether he be of a good Constitution. The Common Premium on a good Life from 20 to 50 Years of Age is 5 *per cent.* and from 50 or 60 Years old, 6 *per cent. per annum:* But these Premiums are higher than any Computation founded on Observations concerning the Probability of human Life, will warrant.——People ought by all Means to be prevented from getting Insurances done with sinister Views, especially that inhuman one of committing Murder to gain the Sum insured; an Instance of which Villainy happened a few Years since in a *London* Apothecary, who having got his Wife's Life insured, soon after killed her. Underwriters should therefore inform themselves of

* At *Genoa* no Insurances may be made, *sine licentia senatûs, super vita Pontificis, neque super vita Imperatoris, neque super vita Regum, nec Cardinalium, neque Ducum, Principum, Episcoporum, neque aliorum Dominorum, aut personarum ecclesiasticarum, seu secularium, in dignitate constitutarum.* Civil Stat. of the Republic of *Genoa, anno* 1610.

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the Motives why an Inſurance is required, and not to be contented with obſcure, plauſible, or fictitious Reaſons. It is indeed true that the Inſurers are not obliged to pay to a Murderer convict, as happened in the Caſe of the aforementioned Apothecary; yet this does not reſtore the Life ſacrificed. A great Part of the Inſurance done on Lives in *London* are for People who have certain Expectations in Reverſion after the Death of ſome Friend or Relation, whoſe Poſſeſſions they have a mind in Part to anticipate by this Means: But ſuch Inſurances ſeem not eaſily to be juſtified, as they fruſtrate the Intention of the Bequeather, and frequently overſet a good Deſign: And a fine Eſtate may be ſoon anticipated by this irregular Method. All Ordinances of Inſurances allow it to be made upon the Lives of Captives in Slavery; but to ſubſiſt no longer than the Bondage does, or till the Perſon be redeemed. *Mag. Inſur.* P. 32. Vol. 1.

2. *J. S.* and others came to the Inſurance Office, and brought a Policy for inſuring the Life of *A.* (upon whoſe Life they had no Concern or Intereſt depending) for a Year, and the Policy run, *whether intereſted or not intereſted*; and the Premium was 5 *per cent.* And they took this Way to draw in Subſcribers: They agreed with *M.* a known Merchant upon the Exchange, and a leading Man in ſuch Caſes, to ſubſcribe firſt; but in caſe *A.* died within the Year, *M.* was to loſe nothing, but, on the contrary, was to ſhare what ſhould be gained from the other Subſcribers. Upon the Credit of *M*'s ſubſcribing, ſeveral others (who had inquired of *M.* about *A.* who was his Neighbour) ſubſcribed likewiſe. *A.* died in four Months, and the Bill was to be relieved againſt this Policy; and this Matter being all confeſſed by Anſwer, the Policy was decreed to be delivered up, and the Premium to be paid, the Plaintiff deducting thereout his Coſts. *Hil.* 1690. *Wittingham* and *Thornborough. Prec.* in *Chan.* 20. The Court ſaid, this Way of inſuring was firſt ſet up for the Benefit of Trade; that when a Merchant happened to have a Loſs,

a Loſs, he might not be undone by it, the Loſs by this Way being borne by many: But if ſuch ill Practices were uſed, it would turn to the Ruin of Trade, inſtead of advancing it. *Ibid.*

3. A Policy of Inſurance was made to inſure the Life of Sir *Robert Howard* for one Year, from the Day of the Date thereof. The Policy was dated the 3d Day of *September*, 1697. Sir *Robert* died on the third Day of *September*, 1698, about one o' Clock in the Morning. And by *Holt* Chief Juſtice in an Action hereupon it was ruled at the Sittings at *Guildhall*, 1ſt, That from the Day of the Date excludes the Day, but from the Date includes it: ſo that the Day of the Date is excluded. 2dly, That the Law makes no Fraction in a Day: yet in this Caſe he dying after the Commencement, and before the End of the laſt Day, the Inſurer is liable, becauſe the Inſurance is for a Year, and the Year is not compleat till the Day be over; yet if *A.* be born on the third Day of *September*, and on the 2d Day of *September* twenty-one Years afterwards he makes his Will; this is a good Will; for the Law will make no Fraction of a Day, and by Conſequence he was of Age. 2 *Salk.* 625. *Trin.* 11 *W.* 3. Sir *Robert Howard*'s Caſe, *S. C. L. Raym.* 480.

Terms, Methods and Advantages of inſuring Lives in the Office of the Amicable Society *for a Perpetual Aſſurance, kept in* Serjeant's-Inn Fleet-ſtreet. *Printed in the Year* 1758.

4. On the 25th of *July*, 1706, the then Lord Biſhop of *Oxford*, Sir *Thomas Aleyn*, Bart. and others, obtained from the late Queen ANNE, a Charter for incorporating them and their Succeſſors by the Name of the AMICABLE SOCIETY *for a* PERPETUAL ASSURANCE OFFICE, for the Purpoſe of making a Proviſion for their Wives, Children, and other Relations, after an eaſy, certain, and advantageous Manner; with Power to purchaſe Lands, ſue and be ſued, and

to

to have a Common Seal, *&c.* The Number of Perſons to be incorporated not to exceed 2000, but might be leſs; each Perſon to receive a Policy, under the Seal of the Corporation, intitling his Nominee to a Dividend on his or her Deceaſe, in the Manner mentioned in the Charter. After paying the Charges of the Policy, and 10 *s.* Enterance Money, each Perſon was to pay 6 *l.* 4 *s. per Annum*, which annual Payments have ſince, by the Increaſe of the Society's Stock been reduced to 5 *l.* a Year, payable Quarterly. From theſe Payments the Dividends to Claimants are to ariſe. For which Reaſon, if they be at any Time a Year and a Quarter in Arrear, ſuch Defaulters are excluded from all Benefit of their Policies. The Affairs of the Corporation are managed by a Court of Directors, according to the Powers granted by the Charter, and the Directions of the By-Laws. The Directors are Twelve, choſen yearly, within Forty Days after every 25th Day of *March*. The Majority of the Members aſſembled at a General-Court, (which is never to conſiſt of leſs than Twenty) are impowered to make By-Laws and Ordinances for the good Government of the Corporation. The Charter directs one of the Members of the Society to be elected their Regiſter, who being alſo their Receiver and Accomptant, is therefore required by the By-Laws to give good Security in the Sum of 2000 *l.* at leaſt. All Perſons at the Time of their Admiſſion are to be between the Ages of Twelve and Forty-five, and muſt then appear to be in good State of Health. Perſons living in the Country may be admitted by Certificates and Affidavits, Forms of which may be had at the Office. Every Claimant is impowered to put in a new Life in the Room of the deceaſed, within Twelve Calendar Months next after the End of the Current Year, for which his or her Claim ſhall be allowed as often as the ſame ſhall happen, upon Payment of Ten Shillings Entrance: Any Perſon may have Two or Three Inſurances (or Numbers) on one and the ſame Life, whereby ſuch Perſons will be intitled

titled to a Claim on each Number ſo inſured. Five Members of the Society are annually elected Auditors, who are by their Office to inſpect every Tranſaction of the Society, to examine all Vouchers for Receipts and Payments, and upon Oath to lay before the quarterly and annual General Courts, the quarterly and annual Accounts of the Society; And on the Day before the holding each Court of Directors, the Auditors are to ſtate and enter in the Directors Minute-Book a Balance of the Caſh of the Society.

That the good End intended by the Charter has been purſued, and the Society found to be greatly beneficial to the Publick, will evidently appear from a State of their yearly Dividends from *Lady Day* 1710, to *Lady Day* 1757, (the preceding Years having been particularly provided for by the Charter) being Forty-ſeven Dividends ſucceſſively, during which Time the Quantum of each Claim amounts upon an Average to the Sum of 106 *l.* 1 *s.* 4 *d.* and upwards: But taking the Computation only for theſe Twenty-three Years laſt paſt, *viz.* from the Year 1734, (when by an Order of the General Court a Part of their yearly Income was appropriated for augmenting their Claims whenever they ſhould happen to be under 100 *l.*) the Quantum of ſuch Claims from the Year 1734 to 1757, have amounted upon an Average to 120*l.* 9 *s.* 1 *d.* and ſo conſiderable has been the Increaſe of the Dividends for theſe Nine Years laſt paſt; that each Claim during that Period has been advanced upon an Average to 142 *l.* 6 *s.* 5½ *d.* *viz.*

	l.	*s.*	*d.*
Anno 1748 ——	125	00	0
1749 ——	100	17	7 ¾
1750 ——	132	17	1 ½
1751 ——	149	04	7 ¼
1752 ——	130	00	0
1753 ——	187	05	5 ¼
1754 ——	185	17	4 ½
1755 ——	149	13	4
1756 ——	190	02	7 ½

N. B. At

N. B. At a General-Court held the 12th Day of *May* 1757, an Order was made for further Augmenting the Dividends on Claims, ſo as that for the future they will not be leſs than 125 *l.* each Claim, but yet may happen to be conſiderably more, which has been the Caſe in ſeveral former Years, as appears by the above Account, in the Inſtances of the ſaid ſeveral Years from 1750 to 1755, incluſive.

The Advantages propoſed from becoming Members of this Society, are principally as follow:

To Clergymen, Phyſicians, Surgeons, Lawyers, Tradeſmen, and particularly Perſons poſſeſſed of Places or Employments for Life: To ſuch Parents, Huſbands or Wives, and other Relations, whoſe Income is ſubject to be determined or diminiſhed at their reſpective Deaths, who by inſuring their Lives by Means of this Society, may now in all Events leave to their Families a Claim, or Right to receive a Sum not leſs than 125 *l.* for every Five Pounds annually paid in, and very probably a larger Sum as appears by the above Account.

To married Perſons, more eſpecially where a jointure, Penſion, or Annuity depends on both or either of their Lives, by inſuring the Life of the Perſons intitled to ſuch Annuity, Penſion or Jointure.

To Dependants upon any other Perſon intitled to a Salary, Benefaction, or other Means of Subſiſtance, during the Life of ſuch Perſon, whoſe Life being inſured in this Society, either by themſelves, or by the Perſon upon whom they are dependant, will intitle them to receive upon the Death of ſuch Perſon, a Sum not leſs than 125 *l.* for each Number ſo inſured.

To Perſons wanting to borrow Money, who by inſuring their Lives, are enabled to give a collateral Security for the Money borrowed.

To Creditors intitled to Demands larger than their Debtors are able to diſcharge, ſuch Debtors may by a like Inſurance ſecure to their Creditors their principal Sums at their Deaths.

The

The above mentioned Advantages are offered chiefly with reſpect to perpetual Inſurances for Life; but temporary Inſurers may find no leſs Advantage from this Society, as may plainly appear from the following Inſtance, *viz. A. B.* has agreed for the Purchaſe of an Office or Employment, but wants 300 *l.* or 400 *l.* to make up the Purchaſe-Money: He is willing to aſſign a Share of the Profits or Income of his Office, as a Security or Pledge for the Repayment of the Principal with Intereſt, but cannot obtain a Loan of that Sum without inſuring his Life till the whole be cleared, which he is enabled to do by the help of this Society. For *Example*, He purchaſes three Numbers on each of which he inſures his Life, and thereby his Aſſigns become intitled to three ſeveral Claims at his Death; which Claims by the above mentioned Proviſion, will not be leſs than 125 *l.* each, and may probably amount to more: He aſſigns and depoſits his Policy with the Lender: He pays to the Society for the yearly Contributions on the three Numbers no more than 5 *l.* each, which is conſiderably leſs than 5 *l. per Cent.* under which Rate no other Office will inſure, and that for one Year only; at the End of which ſuch Offices are at Liberty to refuſe any further Inſurance: Whereas in this Society the Inſurance continues during the Life of the Inſured, unleſs excluded for Non-payment of the quarterly Contributions. And every Inſurer, or their Repreſentatives, at the End of their Inſurance may in great Meaſure (if not entirely) reimburſe themſelves their Purchaſe-Money (originally paid by them for their Numbers) by diſpoſing of them at a Market-Price, which they may do without any further Trouble than applying to the Society's Office.

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SECT. XI.

Of the Action on a Policy of Assurance; and the Evidence necessary to support it.

1. INdebitat. *assumpsit pro præmio*, upon a Policy of Assurance upon such a Ship, the Defendant demurred specially, because he did not shew the Consideration certainly, what the Premium was, or how it became due; *sed non allocat.* for it is as good as *Indebitat. assumpsit pro quodam salario*, which hath been adjudged good. *Molloy*, B. 2. C. 7. §. 3. cites 2 *Lev. Fowlk* v. *Pinsacho.*

2. A general *Indebitatus assumpsit* will lie by an Insurer of a Ship for the *Premium* for which he insured, though the Consideration of such Insurance (*viz.* the Hazard of Loss) is but a Contingency. *Per Cur. Carth.* 338. in Case of *Jackson* v. *Colegrave.*

3. In *Indebitatus assumpsit* by *B.* for 5 *l.* received to the Plaintiff's Use, and *non assumpsit* pleaded, the Case was, that *A* took a Policy of Insurance upon Account for 5 *l.* Premium in the Name of *B.* and *A.* paid the said Premium to *J. S.* and *A.* had no Goods then on board, and so the Policy was void, and so the Money to be returned by the Custom of Merchants. It was insisted that the Action ought to have been in *A*'s Name; for the Money was his, and if the Policy had been good, it would have been to his Advantage, and it could no ways be said to be received to *B*'s Use, it never being his Money. Besides here may be a great *Fraud* upon all Insurers in this, that an Insurance may be made in another's Name, and if a Loss happen, then the Insurers shall pay, for that some *cestui que trust* had Goods on board; but if the Ship arrives, then the nominal Trustee shall bring an *Indebitatus assumpsit* for the Premium, as having no Goods on board. To all which *Holt*, Chief Justice, answered, that the Policy being in *B*'s Name, the

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Premium was paid in his Name, as his Money, and he muſt bring the Action upon a Loſs, and ſo upon Avoidance of the Policy to recover back the Premium; and as to the Inconveniencies, it would be the ſame, whoſoever was to bring the Action, and therefore the Inſurers ought with Caution to look to that before-hand. *Show.* 156. *Paſch.* 2 *W.* and *M. Martin* v. *Sitwell.* *Vin. Ab. Tit. Pol. of Aſſurance,* (A) 37.

4. *B.* having the Command of a Merchant-Ship, and likewiſe a Share in her as being an Owner, in 1730 deſired *A.* by Letter, to get 200 *l.* inſured on her. An Inſurance was made in the Name of *A.* (the Agent) by *B*'s Direction, the Inſurers (*J. S.* and *T. S.*) knowing nothing of *B.* In the Voyage the Ship was loſt, and *B.* the Captain caſt away. *M.* the Adminiſtratrix of *B.* gave *J. S.* and *T. S.* Notice of the Loſs and Truſt, and required Payment to her only. But *A.* under Pretence that *B.* was indebted to him, procured the Inſurers to give him Credit for the Sum in an Account which they afterwards made up with him, and then the Balance of that Account was carried into a new Account, and the ſecond Account was afterwards ſettled between them. Upon a Bill by *M.* to be relieved, it was decreed that the Inſurers pay her the Money, and *A.* to pay the Coſts of Suit, deducting thereout the Charges he had been at in obtaining the Policy. *Barn. Chan. Rep.* 319. *Mich.* 1740. *Fell* v. *Lutwidge.*

5. This Caſe came before the Houſe of Lords upon an Appeal from an Order by Lord Chancellor *King.* The Caſe appeared to be, that the Appellant *Ghettoff* and others having fitted out a Ship for a Voyage from *Oſtend* to *China*, ſent a Commiſſion to one *Deconick*, their Agent in *London*, to procure an Inſurance made by the Reſpondents, the *London Aſſurance* Company, upon the ſaid Ship, for the Voyage aforeſaid, for 5000 *l.* which Inſurance was accordingly made and entered into by the Reſpondents in the common Form. The Ship being loſt in her Voyage,

the Appellants brought their Bill in the Court of *Chancery* againſt the Reſpondents, and alſo againſt *Deconick*, ſetting out the Inſurance, and ſuggeſting that the Ship was loſt; which Loſs amounted in Value to the whole of the ſaid 5000 *l.* and that the Plaintiffs were, in Shares, entitled to recover the ſame. And having ſet forth, that the ſaid *Deconick* was only their Truſtee, they further charged, that he refuſed to let them make uſe of his Name at Law, and that they lived abroad in ſeveral diſtant and remote Places, whereby, and by reaſon of the great Difficulty of producing Witneſſes, *vivâ voce*, they were diſabled from bringing an Action at Law, and therefore prayed a Decree for the 5000 *l.* according to their ſeveral Proportions.

The Reſpondents put in an Anſwer to ſo much of the Bill as related to a Diſcovery; but as to the Demand of the 5000*l.* or any leſs Money, they demurred. For Cauſe of which Demurrer they ſhewed, that, if the Policy was forfeited, a proper Action at Law lay to recover the Money ſo loſt, and that the Appellants, if they had any juſt Demand, might have their complete and adequate Remedy, by ſuch Action at Law, where Matters of this Nature are properly cognizable, and where the Appellants ought to prove their Intereſt and Loſs, and not in a Court of Equity.

This Demurrer was argued before Lord Chancellor *King*, upon the 15th of *June* 1728, and the Appellants Council inſiſting very much on the Allegation in the Bill of *Deconick*, the Truſtees refuſing to permit his Name to be made uſe of in an Action at Law, his Lordſhip was pleaſed to reſpite the Conſideration of the Demurrer, till the coming in of the Defendant *Deconick*'s Anſwer. But, if the Appellants did not procure his Anſwer within two Months, it was ordered, that the Demurrer ſhould be allowed.

Deconick put in his Anſwer within the two Months, and thereby admitted, that he made the Aſſurance in his own Name, in Truſt, and for the Benefit of the Appellants; but ſaid he did not care to permit

mit the Appellants to bring an Action againſt the Company on the ſaid Policy, in his Name, he being adviſed, that if he did, and they failed therein, he ſhould be perſonally liable to pay the Coſts: upon which, on the 21ſt of *November* 1729, the Demurrer came on to be further argued, when it was ordered, that it ſhould ſtand and be allowed. From which Order an Appeal was preferred to the Houſe of Lords, upon the two following Reaſons:

Firſt, for that the Appellants cannot maintain an Action at Law upon the ſaid Policy in their own Names, and it is in the Power of their Truſtee, whether he will permit his Name to be made uſe of or not. And that, in Caſe the Appellants were able to bring an Action in their own Names, it would be to no Purpoſe, in regard that all their Witneſſes, who can prove the Loſs of the Ship, and the reſpective Intereſt of the Appellants therein, live at diſtant Places beyond the Seas, and are not in the Power of the Appellants; nor can the Appellants compel them to come over here to be examined on any Trial at Law.

Secondly, For that the Appellants can have no Manner of Remedy againſt the Reſpondents upon the ſaid Policy, but in a Court of Equity, where they may have an Opportunity, by Virtue of a Commiſſion, to examine their Witneſſes beyond the Seas, and thereby be enabled to prove the Loſs of the ſaid Ship. And that, in Caſe the Appellants are deprived of this Remedy, they will not only loſe the ſaid 5000 *l.* but alſo the Sum of 600 *l.* which they paid, as a Premium to the Reſpondents, upon making the Inſurance. And the Reſpondents, though they are Debtors to the Appellants in 5000 *l.* and Intereſt, will, inſtead of paying ſuch Debt, go away with 600 *l.* of the Appellants Money.

On Behalf of the Reſpondents it was inſiſted, that the Order for allowing this Demurrer was agreeable to Equity.

Firſt, that the Appellant's Demand is plainly a Demand at Law, they having nothing to prove but their

Intereſt and the Loſs of the Ship, which are Facts proper to be tried by a Jury.

Secondly, that there is no Equity ſuggeſted in the Bill, but a pretended Difficulty to produce Witneſſes, and that their Truſtee refuſed them to bring an Action in his Name. The former of which may with equal Reaſon be ſuggeſted, in almoſt every Caſe of a Policy of Inſurance; and the latter appears manifeſtly to be thrown into the Bill merely to change the Juriſdiction, and is in a great Meaſure ſatisfied by the Truſtee's Anſwer. For he does not ſay he ever refuſed; but that at the Time of ſwearing his Anſwer he did not care to let his Name be made uſe of.

Thirdly, that if Bills of this Kind are encouraged, it will be very eaſy to bring all Kinds of Property to be tried in a Court of Equity. The Lords were pleaſed to affirm the Order. *Dict. Tr. and Com. In domo procerum. Feb.* 1730. *De Ghettoff et al.* v. *London Aſſurance Company.*

6. In an Action upon a Policy of Inſurance, by ſeveral Perſons, as Part-Owners of the Ship inſured, it was held that the Plaintiffs are obliged to prove their reſpective Intereſts in the Ship, and that a Proof of Intereſt in ſome of the Plaintiffs is not a ſufficient Ground to recover upon, though the Intereſt proved be more in Value than the Amount of the Inſurance: And a Nonſuit was recorded. But it ſeemed agreed in this Caſe, that the Plaintiffs are not to be put upon producing their reſpective Bills of Sale of their reſpective Intereſts in the Ship; for that ſuch Sale may be by Parol; but it was held they muſt produce ſome Evidence of Property, as Acts of Ownerſhip, which the Plaintiffs could not make out; and it was held that the Reputation of being the Owners, without ſhewing their Title, or proving Acts of Ownerſhip, is not ſufficient. *Dict. Tr. and Com. Curling* v. *Brand.* At *Guildhall*, before *Lee*, Chief Juſtice.

7. It

7. It was ruled by *Holt*, Ch. J. *May* 31. *Paſch.* 11 *W.* 3. at *Guildhall*, that in an Action on a Policy of Aſſurance of a Ship, if the Plaintiff's Witneſs ſwears that the Ship was condemned by Proceſs of Law, it is good Evidence to prove it; but if the Defendant had offered that Matter in Evidence by his Witneſſes, it would not have been ſufficient without producing the Sentence of Condemnation. *L. Raym.* 724. *Anon.*

8. Action may be maintained on a Policy of Aſſurance, made in the Name of *J. S.* if *J. S.* declares the Truſt in Writing. See the Caſe of *Rooke* v. *Thurmond*, and *Spencer* and *Franco*, in this Book.

9. In an Action brought upon a Policy of Aſſurance of a Ship, it appears upon the Evidence, that the Ship was condemned by Proceſs of Law and ſeized: By this Sentence the Property and Ownerſhip are deſtroyed, and there is no Remedy upon the Policy of Inſurance. Ruled by *Holt*, Ch. J. *May* 31. at *Guildhall*. *L. Raym.* 724.

10. It is not eaſy to deſcribe the Number and Nature of the Proofs, or Documents required to recover a Loſs. Some we will enumerate. It is common for the Inſurers to aſk.

1. What is inſured elſewhere upon the Ship or Goods, for which the Loſs or Damage is demanded?

2. The Inſurers aſk for the Proteſt; which is a Declaration upon Oath uſually made by the Maſter, and ſome of his People, before a Juſtice, Notary, or Council, at any Place where they firſt arrive; ſetting forth what bad Weather they met with in the Voyage, or any other Accident that befel them: As alſo what Precaution they took to guard againſt the ill Conſequences to be apprehended from thoſe Accidents, with the Motives they had for going into any other Harbour than that they were bound to: Which Sort of Proteſts are now become almoſt a mere Matter of Form, as a Notion is propagated at ſome Places, that

if the Maſters neglect proteſting, immediately after Arrival, againſt the Damages that have reſulted from any bad Weather, they make themſelves anſwerable for thoſe Damages that ſhall be found in any of the Goods aboard; from which they believe a Proteſt frees them. But this cannot be ſufficient to clear them on all Occaſions. It is true the *French* Ordinance of 1681, *Tit.* 10 *Congés et Reports*, *Art.* 4. enjoins, "That all Maſters ſhall be obliged to make "a Report within twenty-four Hours after their Ar- "rival, before the Lieutenant or Judge of the Admi- "ralty, of all that has happened in their Voyage." But we imagine that the Intent of this Order is only to prevent the making any partial Declarations, by not allowing Time, and Room for it: which might have ſome Weight where the Maſter was no ways concerned, but not when the Queſtion is, whether the Damage did not proceed from his own Careleſſneſs, bad Stowage, or Defect in caulking his Decks; for on any Appearance of ſuch Neglects, the Proprietors of the Goods have a Right, notwithſtanding the Proteſt, to inſiſt that the Ship be viſited, and a particular Examination of the Crew taken, how, and where theſe Goods were laid. At *Hamburgh* it is the Cuſtom ſoon after a Ship's Arrival, though not within twenty-four Hours, to ſend a printed Notification to every Perſon, who has Goods on board, importing that the Maſter fears his Cargo may have ſuffered Damage: The Intent of this is, that all who have Goods to receive, may ſend to inſpect the Ship, and the Places where they were ſtowed, before they take them aſhore. This is certainly a very prudent Precaution, and tends greatly to the Maſter's Juſtification. At *London*, Maſters ſeldom do any thing more, than to have their Intentions of making a Proteſt noted before a Notary Publick, without giving any Information to the Perſons who are to receive the Goods, &c.

3. For

3. For the Bill of Sale, and often for the Custom-house Registers, to find out the Owners, when Insurances are made on the Body of a Ship.

4. For Bills of Lading signed by the Master; which are usually called for, to prove an Interest in Goods: But if there is any apparent Reason to distrust their being genuine, all such Clearances, or Registers from the Custom-houses, as are ordinarily given where the Ship has been dispatched, are called for; and upon Proofs of such Authority a greater Dependance in general may be made than upon mere Bills of Lading; more especially upon Certificates from those Registers which the *Spanish* Ships in their *West India* Trade carry along with them, and of which Duplicates remain behind in the Custom house: For the Manner of making such a Register is, that every Person who has goods to ship, previous to their Embarkation gives an Account of their Bales and Marks, and pays a Duty for them, either by Weight or Measure, which is explained in a Cocket; and when they pass the Gates, or go to be shipped, they are searched to see whether they correspond with the Entry delivered in; and if they do, each Parcel, is marked with a Custom-house Stamp, and the Cocket signed by the Searchers. When on board another Set of Visitors re-examine them, and put their *Cumplido* upon each Cocket, out of all which the general Register is framed, to go by the Ship, in Order to a Re-examination by the King's Officers at the Places of their unloading in *America*. *Mag. Insur.* Vol. 1. P. 87.

SECT. XII.

Calculation of the Sum neceſſary to be inſured ſo as to cover the Outſet of the Adventure.

IN Caſe of a Loſs, it is cuſtomary for the Inſurers to pay but 98 *l.* for every 100 *l.* inſured, or to have two *per Cent.* abated, when he ſettles with the inſured according to Agreement in the Policy.

As the Inſurer has a Right to the Premium, when the Agreement is made, that Premium, whatever it is, makes a Part of the Money paid, in Caſe of Loſs: Therefore,

At 10 *per Ct.* Premium, the Inſured receives but 88 *l.*
15 - - - - - 83
20 - - - - 78
26 - - - - - 73
30 - - - - 68
40 - - - - - 58

And ſo in Proportion in the Caſe of any Premium.

In order to ſhew the Sum neceſſary to be inſured, if the Adventurer would cover, or make good his Outſet, or firſt Adventure, in Caſe of a Loſs, let 10 *per Cent.* be the ſuppoſed Premium on an 100 *l.* Adventure. Then,

As 88 *l.* is to 100 *l.* ſo is 100 *l.* to 113 *l.* 12 *s.* 8 *d.* the Sum neceſſary to be inſured to make good 100 *l.*

As 88 *l.* is to 100 *l.* ſo is 10 *l.* to 11 *l.* 7 *s.* 3 *d.* the Amount of Inſurance. All which is proved by the following Example, *viz.*

The

	l.	*s.*	*d.*
The Sum to be insured - -	113	12	8
Deduct two *per Cent.* or reckon 98 *l.* for 100 *l.* - - -	2	5	5
The Insurer pays, in Case of a Loss	111	7	3
Deduct Insurance on 113 *l.* 12 *s.* 8 *d.* at 10 *per Cent.* - - -	11	7	3
Remains the first Cost of the Adventure - - - -	100	0	0

And so as to the rest of the Articles, or any other Adventure, or Premium, on a *single Voyage*.

According to this Example, the six Articles of Premium, before mentioned, will be shewn by the following Table*.

Premiums.	Sums to be insured to make good 100*l* on a single Voyage.			Abate two *per Cent.*			Remains			Deduct the Insurance or Premium on the Sum insured.			Remains
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*
at 10 *p. Ct.*	113	12	8	2	5	5	111	7	3	11	17	3	100
15 ——	120	9	7	2	8	2	118	1	5	18	1	5	100
20 ——	128	4	1	2	11	3	125	12	10	25	12	10	100
25 ——	136	19	8	2	14	9	134	4	11	34	4	11	100
30 ——	147	1	2	2	18	10	144	2	4	44	2	4	100
40 ——	172	8	3	3	9	0	168	19	3	68	19	3	100

* In these Tables there is no Regard had to Commissions, Office-charges, Interest of Money, or Risque of Insurers, as they often vary according to Circumstances: For some People insure themselves, and pay no Commission; others employ their Factors, and pay them $\frac{1}{2}$ *per Cent.* on the Sum insured, and one or two *per Cent.* on recovering Losses. The Office receives 4 *s.* 6 *d.* for the Policy, and $\frac{1}{2}$ *per Cent.* from the Insured upon settling Losses; Interest is seldom chargeable but in the Case of long Voyages. Whatever these Charges shall happen to be, they may be deducted, upon any Computations, together with the two *per Cent.* abated by the Insurer. The Office-keeper keeps an Account with the Insured and Insurer, and with the Consent of the Insurer, retains in his Hands one Shilling in the Pound, or five *per Cent.* on such Premiums as he receives from the Insured.

The

The foregoing Computation ſhews the Amount of Inſurance on one *ſingle Voyage*; in the next Place will be ſhewn how it will ſtand with a Voyage out and home, or a *double Voyage*, &c. The Voyage out is conſidered as one ſingle Voyage, which is already explained in the Article of 10 *per Cent.* Premium: And as to the Voyage home, deduct the Premium from 98, as aforeſaid: Then ſay, *as the Remainder, is to the Premium, ſo is the Amount of the firſt Inſurance, together with* 100*l. to the Inſurance of the Voyage home.* This Inſurance home, *added to the Inſurance out, makes up the total Inſurance.* As for Inſtance, the Premium of 10 *per Cent.* on 100*l.* Outſet makes the Inſurance out 11*l.* 7*s.* 3*d.* that added to 100*l.* makes 111*l.* 7*s.* 3*d.* Then, to find the Inſurance home at 10 *per Cent.* Premium, ſay,

As 88*l.* is to 10*l.* ſo is 111*l* 7*s.* 3*d.* to 12*l.* 13*s.* 1*d.* Then add the 12*l.* 13*s.* 1*d.* Inſurance home to the 11*l.* 7*s.* 3*d.* Inſurance out, it makes 24*l.* 0*s.* 4*d.* * total Inſurance to make good 100*l.* out and home; and the Sum neceſſary to be inſured home will, according to the foregoing Example, amount to 126*l.* 10*s.* 11*d.*

The Premium of 40 *per Cent.* which is the higheſt Premium mentioned, makes the Inſurance out 68*l.* 19*s.* 3*d.* on 100*l.* Outſet, and the like Premium of 40 *per Cent.* home makes the Inſurance 116*l.* 10*s.* 6*d.* as is demonſtrable from the ſame Principles: For as 58*l.* is to 40*l.* ſo is 168*l.* 19*s.* 3*d.* to 116*l.* 10*s.* 6*d.* Then add the Inſurance out and home it will make 185*l.* 9*s.* 9*d.* * total Inſurance, to make good 100*l.* in Caſe of a Loſs, which is proved by the following Example.

* See the following Table.

As

	l.	*s.*	*d.*
As 58 *l.* is to 100 *l.* so is 168 *l.* 19 *s.* 3 *d.* *to the Sum necessary to be insured home to make good* 100 *l. for the first Outset.*	291	6	4
Deduct two *per Cent.* Abatement	5	16	7
The Insurer pays in Case of a Loss	285	9	9
Deduct Insurance home on 291 *l.* 6 *s.* 4 *d.* at 40 *per Cent.*	116	10	6
	168	19	3
Deduct also Insurance out	68	19	3
Remains the Cost of the first Outset	100	0	0

And so as to any other Adventure, or Premium, on a *double Voyage*, as may be seen from the following Table, *viz.*

The Amount of Insurance to make good 100 *l. out and home.*

Premiums out and the same home	Out			Home.			Total		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
at 10 *p. Ct.*	11	7	3	12	13	1	24	0	4
15 ——	18	1	5	21	6	9	39	8	2
20 ——	25	12	10	32	4	4	57	17	2
25 ——	34	4	11	45	19	5	80	4	4
30 ——	44	2	4	63	11	7	107	13	11
40 ——	68	19	3	116	10	6	185	9	9

Here follows the Difference between Convoys and no Convoys, in an Instance of a treble Voyage, the Rotation being from *England* to *Africa*, from thence to *America*, and then home.

Insurance from *England* to *Africa* may be done in Time of War, at about seven *per Cent.* with good Convoy, and not under fifteen *per Cent.* without Convoy; and the Voyage may be performed in forty to fifty Days. Insurance from *Africa* to *America* will be

about ſix *per Cent.* with ſuch Convoy, and eighteen *per Cent.* without Convoy; and this Voyage may be performed in forty to fifty Days. The Inſurance from *America* to *Great Britain*, with good Convoy, will be at about 10 *per Cent.* and without Convoy, at about 25 *l.* *per Cent.* and this Voyage may be performed in forty to ſixty Days.

To ſhew the Amount of Inſurance at the above mentioned Rates, to make good 100*l.* Outſet throughout the whole Rotation, deduct the ſeveral Premiums from 98, as aforeſaid; and then add the *Premium or Premiums on the firſt and ſecond Voyages to* 100*l.* Then,

For the firſt Voyage ſay,

As 91 *l.* is to 7 *l.* ſo is 100*l.* to 7 *l.* 13 *s.* 10 *d.*
83 *l.* is to 15 *l.* ſo is 100 *l.* to 18 *l.* 1 *s.* 5 *d.*

For the ſecond Voyage,

As 92 *l.* is to 6*l.* ſo is 107*l.* 13 *s.* 10 *d.* to 7 *l.* 0*s.* 6*d.*
80*l.* is to 18 *l.* ſo is 118 *l.* 1 *s.* 5*d.* to 26 *l.* 11 *s.* 4*d.*

For the third Voyage,

As 88 *l.* is to 10*l.* ſo is 114*l.* 14*s.* 4*d.* to 13*l.* 0*s.* 8*d.*
73*l.* is to 25*l.* ſo is 144*l.* 12*s.* 9*d.* to 29*l.* 10*s.* 8*d.*

The Amount of the whole, and the Difference between good Convoys and no Convoys, will appear from the following Table, *viz.*

	The Amount of Inſurance with good Convoy *per cent.*			The Amount of Inſurance without Convoy *per cent.*			Difference in the Inſurance *per cent.*		
	l.	*s.*	*d.*	*l.*	*s.*	*d.*	*l.*	*s.*	*d.*
From *England* to *Africa*	7	13	10	18	1	5	10	7	7
From *Africa* to *America*	7	0	6	26	11	4	19	10	10
From *America* to *Great Britain*	13	0	0	49	10	8	36	10	0
Total	27	15	0	94	3	5	66	8	5

To find the Sum neceſſary to be inſured to make good, or cover 100 *l.* outſet on a treble Voyage, in the Caſe of 25 *l. per Cent.* Premium, from *America* to *Great Britain*, and the other Premiums without Convoy, as above mentioned, ſay,

As 25*l.* is to 100*l.* ſo is 49*l.* 10*s.* 8*d.* to 198*l.* 2*s.* 8*d.*

or,

As 73*l.* is to 100*l.* ſo is 144*l.* 12*s.* 9*d.* to 198*l.* 2*s.* 8*d.* the Sum neceſſary to be inſured without Convoy; and by the ſame Rule, 130*l.* 7*s.* 2*d.* will be ſufficient with Convoy.

This will appear from the following Example:

				l.	*s.*	*d.*
The Sum to be inſured				198	2	8
Deduct 2 *per cent.* Abatement				3	19	3
The Inſured receives in caſe of Loſs				194	3	5
Deduct Inſurance on 198*l.* 2*s.* 8*d.* at 25 *per cent.*				49	10	8
				144	12	9
Deduct Inſurance on						
the Outſet	18	1	5			
on the ſecond Voyage	26	11	4	44	12	9
Remains the Coſt of the firſt Outſet				£. 100	0	0

And ſo as to any other Adventure, or Premiums, on any other *treble Voyage*. *Dict. Tr. and Com.*

The following Caſe will further illuſtrate what hath been ſaid in this Section.

At Guildhall, May 15*th* 1759. *Sir* Alexander Grant, *Bart. againſt* William Innes.

The Plaintiff declared that on the 13th *February* 1758, at *London*, according to the Cuſtom of Merchants, from Time whereof the Memory of Man is not to the contrary there uſed and approved of, cauſed to be made a certain Writing or Policy of Aſſurance; purporting that the Plaintiff, as well in his own Name

as for and in the Name and Names of all and every other Perſon or Perſons, to whom the ſame did, might, or ſhould appertain in Part or in all, did make Aſſurance, and cauſed himſelf and them and every of them to be inſured, loſt or not loſt, *at and from* Jamaica *to* London, upon the Body, Tackle, Apparel, Ordnance, Munition, Artillery, Boat and other Furniture of and in the good Ship or Veſſel *the Prince of Orange*, whereof was Maſter for that Voyage Captain *James Anderſon*, or whoſoeve elſe ſhould go for Maſter in the ſaid Ship, or by whatſoever other Name or Names the ſaid Ship or the Maſter thereof was or ſhould be named or called, beginning the Adventure upon the ſaid Ship, *&c. from and immediately following her firſt Arrival in* Jamaica, and ſo ſhould continue and endure until the ſaid Ship, with her ſaid Apparel, *&c. ſhould be arrived at* London, and there had moored at Anchor twenty-four Hours in good Safety; and that it ſhould be lawful for the ſaid Ship in that Voyage to proceed and ſail, and to touch and ſtay at any Port or Places whatſoever without Prejudice to that Inſurance; the ſaid Ship, *&c.* for ſo much as concerned the Aſſured, was and ſhould be valued at ——*.

Touching the Adventures and Perils, which the Aſſurers were contented to bear, and did take upon them in that Voyage, they were of the Seas, Men of War, Fire, Enemies, Pirates, Rovers, Thieves, Jetteſons, Letters of Mart and Countermart, Surpriſals, Takings at Sea, Arreſts, Reſtraints and Detainments of all Kings, Princes and People, of what Nation, Condition or Quality ſoever, Baratry of the Maſter and Mariners, and of all other Perils, Loſſes and Misfortunes, that had or ſhould come to the Hurt, Detriment or Damage of the ſaid Ship, *&c.* or any Part thereof; and in Caſe of any Loſs or Misfortune, it ſhould be lawful to the Aſſured, their Factors, Servants and Aſſigns to ſue and labour for, in and about the Defence, Safeguard and Recovery of the

* A Blank was left for the Sum.

ſaid

ſaid Ship, *&c.* or any Part thereof, without Prejudice to that Inſurance; to the Charges whereof they the Aſſurers would contribute, each according to the Rate and Quantity of his Sum therein aſſured, *&c.* And ſo they the Aſſurers were contented, and did thereby promiſe and bind themſelves, each one for his own Part, their Heirs, Executors and Goods, to the Aſſured, their Executors, Adminiſtrators and Aſſigns, for the true Performance of the Premiſſes; confeſſing themſelves paid the Conſideration due unto them for that Aſſurance by the Aſſured *at and after the Rate of thirty Guineas* per Cent. in Caſe of Loſs; the Aſſured to abate two *per Cent.* and by the ſaid Writing or Policy of Aſſurance the Ship and Freight were warranted *free from Average under three Pounds* per Cent. unleſs general or the Ship ſhould be ſtranded; and by the ſaid Writing or Policy of Aſſurance it was declared *that the following Aſſurance was upon Ship and Freight*; and that the Underwriter was to return 15*l.* if the ſaid Ship departed with Convoy for the Voyage, and 5*l. per Cent.* for Convoy through the windward Paſſage or Gulph of *Florida*, &c. Of which ſaid Writing or Policy of Aſſurance the Defendant afterwards had Notice, and thereupon afterwards, on the ſame Day and Year, at *London*, in Conſideration that the Plaintiff at the ſpecial Inſtance and Requeſt of the Defendant, had then and there cauſed to be paid to the Defendant 30 Guineas as a Premium and Reward for the Aſſurance of 100*l.* of and upon the ſaid *Ship and Freight* mentioned in the ſaid Writing or Policy of Aſſurance, and had undertaken, and then and there faithfully promiſed the Defendant to perform and fulfil all Things contained in the ſaid Writing or Policy of Inſurance on the Part and Behalf of the Aſſured in that Behalf to be performed and fulfilled, he the ſaid Defendant undertook, and then and there faithfully promiſed the Plaintiff, that he would become an Aſſurer to the Plaintiff for the ſaid Sum of 100*l.* *of and upon the ſaid Ship and Freight* mentioned in the ſaid Policy, and that he would perform and fulfil all

Things

Things contained in the ſaid Policy on his Part and Behalf, as ſuch Aſſurer, as to the ſaid 100 *l.* to be performed and fulfilled according to the Form and Effect of the ſaid Policy, and ſubſcribed the ſaid Policy as ſuch Aſſurer for the ſaid 100 *l.*

That the ſaid Ship before the making of the ſaid Writing or Policy of Aſſurance, that is, on the 10th *December* 1757, was in good Safety at *Jamaica*; and that afterwards divers Goods and Merchandize, to the Value of 10,000 *l.* were laden and put on board her to be carried on Freight; and that the Plantiff, at the Time of loading the ſaid Goods and Merchandizes on board the ſaid Ship, and from thence until the Loſs of the ſaid Ship, Goods and Merchandizes hereafter mentioned, was intereſted in the ſaid Ship, and in the ſaid Freight of the ſaid Goods and Merchandizes in the ſaid Policy mentioned, to the Value of all the Money ever inſured or cauſed to be inſured thereon.

That ſaid Ship, on 12th *December* 1757, departed and ſet ſail from *Jamaica* on her Voyage towards the Port of *London*; and that the ſaid Ship, with the ſaid Goods and Merchandizes, ſailing and proceeding on her ſaid Voyage, after her ſaid Departure from *Jamaica*, and before her Arrival at the Port of *London*, that is, on the 2d *February* 1758, was attacked, conquered, and taken a Prize by the *French*; and, together with the Goods and Merchandizes, was then and there wholly loſt to the Plaintiff: Of all which Premiſſes the Defendant had Notice on the 1ſt *May* 1758, and was requeſted by the ſaid Plaintiff to pay him 98 *l.* Parcel of ſaid 100 *l.* ſo by him aſſured; 2 *l.* Reſidue of ſaid 100 *l.* being to be abated to the Defendant in Reſpect of the ſaid Loſs.

There was another Count for 100 *l.* had and received by the Defendant for the Plaintiff's Uſe. Damages 100 *l.*

The Defendant paid 56 *l.* into Court, and pleaded *non aſſumpſit*; whereupon Iſſue was joined.

The Plaintiff, after fitting out and victualling the ſaid Ship at *Waterford*, ſent her to *Jamaica* to take in her

her Cargo, as before ſtated, and between the 11th and 13th *February* 1758, cauſed to be inſured by different Perſons the Sum of 1600*l.* *at and from* Jamaica *to* London, *upon the ſaid Ship and Freight*, beginning the Adventure from and immediately following the Ship's arrival at *Jamaica*, and ſo to continue until ſhe ſhould arrive at *London*.

The Ship took in her Cargo at *Jamaica*, and on 2d *December* 1757, ſailed from *Montego Bay* in the ſaid Iſland without Convoy, and on 2d *February* 1758, was taken as aforeſaid.

About the 12th *February* 1758, the Ship was retaken by a *Britiſh* Privateer called the *Britannia*, Capt. *Dobſon*, who became intitled to half the nett Proceeds; and Plaintiff applied to the Recaptor's Agent, and deſired he might have the Direction of ſelling the Ship and Cargo for the Benefit of the concerned, but was refuſed; whereupon two Brokers were mutually agreed to by all the Parties to ſell and diſpoſe of the Ship and her Cargo.

The Ship and Cargo were accordingly ſold by publick Auction, with the mutual Conſent of the Plaintiff, Inſurers and Recaptors; and one half of the nett Proceeds was paid to the Plantiff, and the other half to the Recaptor; and in the Account delivered by the Broker, the Plaintiff was allowed for the Ship's Freight 1322*l.* 8*s.* 6*d.*; and though the Plaintiff hath declared for a total Loſs, he only claims a partial or Average-Loſs.

The Ship and her Cargo being thus ſold by publick Auction, the Plaintiff delivered in all his Vouchers to the Policy-Broker to make up the Account and ſtate the Loſs for the Examination of the Inſurers: The Account was ſtated as follows:

	l.	*s.*	*d.*
The *Prince of Orange* coſt at private Sale	550	0	0
Amount of the Outſet by the Ship's Books	522	2	2
Premium of * 1155*l.* from *London* to *Waterford* at five Guineas *per Cent.* and Policy - - - - -	60	17	3
	1131	19	5
Proviſions for Ship's Uſe at ditto	110	9	1
	1243	8	6
Deduct Freight from *London* to *Waterford* - - - - - -	121	0	0
	1122	8	6
Deduct return of 1 ½ *per Cent.* for Convoy on 1155*l.* as above - -	28	17	6
	1093	11	0
Premium on † 1190*l.* from *Ireland* to *Jamaica* at ſix Guineas *per Cent.* and Policy - - - - -	75	4	0
	1168	15	0
Deduct Freight from *Ireland* to *Jamaica*	290	14	0
	878	1	0
Premium on ‡ 1320*l.* from *Jamaica* to *London* at 30 Guineas *per Cent.*	416	0	6
	1294	1	6

* The Sum that muſt be inſured to cover the Value of the Ship and her Outſet at five Guineas *per Cent.*

† What muſt be inſured to cover 1093*l.* 11*s.* (the Value of the Ship at *Waterford*) at ſix Guineas *per Cent.*

‡ What muſt be inſured to cover 878*l.* 1*s.* (the Value of the Ship at *Jamaica*) at 30 Guineas *per Cent.*

Total

	l.	*s.*	*d.*	*l.*	*s.*	*d.*
Total Amount of the Freight	1322	8	6			
From which deduct the Portlage Bill and Charges in the River, which may be about - - -	422	8	6			
	900	0	0			
Premium of * 1350*l.* at 30 Guineas *per Cent.* -	425	5	0			
				1325	5	0
So that there might be insured on the Ship —	1320	0	0			
And on the Freight —	1350	0	0			
	2670	0	0			
Half the nett Proceeds of the Ship and Freight - - -				940	11	1
From which deduct half the Crew's Wages home				138	11	3
				801	19	10
2670*l.* at 98 *per Cent.* -	2616	12	0			
Received - -	801	19	10			
	1814	12	2			

If 2670*l.* loſs 1814*l.* 100*l.* will loſe 67*l.* 18*s.* 9*d.* being the Average-Loſs claimed by the Plaintiff.

Defendant's Objections.

It is underſtood, that the Practice amongſt Merchants is, to inſure no more on Ship and Freight, than the Sum it will require to bring her on an Equality whether ſhe arrives or not; but when neither are *valued*, to aſcertain whether a Merchant chooſes to have a Profit in View by her Arrival or Capture, and for which, when valued, he pays a certain Premium, it ſeems natural that the Inſured means only to be ſe-

* To cover 900*l.*

cured and reinſtated in his real Property, into which the Inſurers have a Right to enquire, and to ſee that the Account is properly ſtated; and it muſt be owned, the Wear of a Ship greatly reduces her Value, which the Freight again anſwers, but with heavy Charges: Therefore Ship and Freight are the ſame; or if they are ſeparated, it depends much on Fancy. Wherefore in this Caſe the Owners ſhould only have inſured as under:

	l.	*s.*	*d.*
The Value of the Ship at *Jamaica* being	878	1	0
Required only Inſurance on 1350 *l.* on Ship and Freight at 30 Guineas *per Cent.* - - - -	425	5	0
	1303	6	0
If a total Loſs had happened, this 1350 *l.* ſecured the Owners at 98 *l.* *per Cent.* 1323 *l.*			
As ſhe was taken, *&c.* they received for half Ship and Freight	801	19	10
	501	6	2

If 1350 *l.* loſes 501 *l.* 6*s.* 2*d.* 100*l.* loſes 37 *l.* 2 *s.* which the Defendant offered to pay the Plaintiff.

Some urge it to be the Cuſtom to inſure nett Freight, as well as the Value of a Ship; and it is too general a Cuſtom, alſo, to miſtake what that *nett* Freight actually is, or rather impoſſible to calculate exactly, what a Ship and Freight will yield in the Middle of a Voyage: Therefore it is incumbent on an Owner to pleaſe himſelf, and declare it by a Valuation of both; but if he does not, and leaves all open, it is to be preſumed he means only to ſecure his real Property; and Inſurers can never be liable to pay the Loſs on an accidental or imaginary Profit, in Caſe of a total Loſs, while the Aſſured (in the Event of a ſafe Arrival, and that by heavy Charges, ſuch as thirty Guineas to Sailors for the Run home, his ſuppoſed nett Freight, or Profit, does not yield to his

his Expectation) can have Recourſe upon the Inſurers for a Return of Premium, by complaining of his Miſtake after the Ship's Arrival. Wherefore all Inſurances left open, *not valued*, are intended only to ſecure the real original Property; but as there are *Facts* in the preſent Caſe, let it be ſuppoſed the Aſſured, or Owner, meant to make Profit (which is granting a Contradiction on an unvalued Policy) by inſuring his Freight at a high Rate, his Claim for Return of Premiums would be founded on the following State, by proving his Intereſt at the higheſt it now turns out to be at the End of the Voyage.

Suppoſe 2670 *l.* had been inſured, without valuing the Ship and Freight, and the Ship arrived ſafe, the Aſſured could have demanded a Return of Premium by ſtating his Account thus:

	l.	*s.*	*d.*
Amount of the Ship's Freight	1322	8	6
Ditto of Ship ſold at - - -	720	0	0
Total Value	2042	8	6

	l.	*s.*	*d.*			
Coſt at *Jamaica* - -	878	1	0			
Premium on 1350 *l.* Ship and Freight - -	425	5	0			
Portlage Bill - -	438	8	9			
				1741	14	9
Nett Freight or Profit to be inſured at 286 *l.* 14 *s.* to bring it home -				300	13	9
Inſurers Debtors to Premium of 2670 *l.* at 30 Guineas - - -				841	1	0

	l.	*s.*	*d.*	*l.*	*s.*	*d.*			
By Inſurance on	1350	0	0	- 425	5	0			
By do. on nett Frt. at	286	14	0	- 90	6	3			
	1636	14	0				515	11	3
Sum over-inſured	1033	6	0	— is —			325	9	9
	2670	0	0						

	l.	*s.*	*d.*
The above nett Freight at *Jamaica*	300	13	9
Deduct Coſt of Inſurance on 286 *l.* 14 *s.*	90	6	3
When brought home to *London* yields	210	7	6

N. B. Inſtead of adding the Premium to a ſuppoſed Profit on Ship and Freight at *Jamaica*, the Premium thereof muſt always be deducted, and leſs inſured to make it a real Value.

PROOF.

If ſhe had arrived ſafe.

	l.	*s.*	*d.*
She ſold at, or was worth - -	720	0	0
Her Freight turned out at - -	1322	8	6
	2042	8	6

	l.	*s.*	*d.*			
Coſt at *Jamaica* - -	878	1	0			
Inſurance on 1638 *l.* 14 *s.*	515	11	3			
Portlage Bill - -	438	8	9			
				1832	1	0
				210	7	6

If ſhe had been a total Loſs.

1636 *l.* 14 *s.* at 98 *per Cent.* would pay				1603	19	9
Coſt at *Jamaica* - -	878	1	0			
Inſurance Premium - -	515	12	3			
				1393	12	3
Neat Profit				210	7	6

As

As ſhe was taken and retaken.

	l.	*s.*	*d.*
1636 *l.* 14 *s.* at 98 *per Cent.*	1603	19	9
By nett Proceeds of half Ship and Freight	801	19	10
The Inſurers muſt then have paid -	801	19	11
Nett Proceeds of half Ship and Freight	801	19	10
	1603	19	9

	l.	*s.*	*d.*			
Coſt at *Jamaica* - -	878	1	0			
Ditto Premium - -	515	11	3			
				1393	12	3
Nett Profit				210	7	6

As certainly every Man means his true Intereſt in all his Operations in Trade, therefore the above State proves proper Calculations; as whether a ſafe Arrival, a total Loſs, or a Capture and Recapture had happened, the Profit or nett Freight turns out equally the ſame. Wherefore in all Inſurances of Ship and Freight, both or either, left general, *and not valued*, the Aſſured can calculate in the above Manner for a Return of Premium; as alſo the Inſurers from paying too much. If the Inſurers were to pay (reſpecting the Caſe in Queſtion) on the imaginary Sum of 2670, the Aſſured would not only gain 896 *l.* 13 *s.* 4 *d.* by the Capture and Recapture, an *Accident*, but ſaves alſo 115 *l.* 6 *s.* 9 *d.* they would have loſt had the Ship arrived ſafe, without the leaſt Chance of a reciprocal Advantage to the Inſurers by any Accident.

If Cuſtom is pleaded to a contrary Practice reſpecting Freight, it has no Relation to an Inſurance on Ship and Freight; becauſe if a high Valuation is made and inſured on the one, ſo much the leſs ought to be done on the other.

This Cauſe coming on to be heard, and the Plaintiff's Witneſſes proving, that it was cuſtomary in the City of *London* for an Owner of a Ship to cover his Intereſt both in Ship and Freight by inſuring Ship

and Freight, and the Premium paid for inſuring the ſame (the Underwriter taking the Premium in caſe the Ship arrives ſafe) the Jury gave a Verdict for the Plaintiff *.

SECT. XIII.

Of Averages and Contributions.

1. AVerage, in the Merchant's Law, is uſed or taken for a certain Contribution that Merchants and others, who have their Goods caſt into the Sea, do proportionably make towards their Loſſes for the Safeguard of the Ship, or of the Goods and Lives of thoſe in the Ship in the Time of Tempeſt; and this Contribution ſeems to be ſo called, becauſe it is proportioned after the Rate of every Man's Average or Goods carried. It is derived from the Word *Averia*, *Cattle* †. *Molloy*, B. 2. C. 6. §. 4.

2. Ships being freighted, and at Sea, are often Subject to Storms and other Accidents, when, by the ancient Laws and Cuſtoms of the Sea in *extreme Neceſſity*, *the Goods*, *Wares*, *Guns*, *or whatſoever elſe* ſhall be thought fit, may in ſuch Extremity be flung overboard: But then the Maſter ought to conſult with his Mariners, who, if they conſent not, and yet the Storm and Danger continues, the Maſter may, notwithſtanding, command what he ſhall think proper to

* If the Plaintiff had inſured to the full Amount of his Valuation, that is, 2670 *l.* the Principle inſiſted upon by the Defendant, would, it ſeems, have been right; for the Deſign of Inſurances is not to cover an *imaginary* Profit, but to ſecure a *real* Intereſt.

† Whatever the Maſter of a Ship in Diſtreſs, with the Advice of his Officers and Sailors, deliberately reſolves to do for the Preſervation of the whole, in cutting away Maſts or Cables, or in throwing Goods overboard to lighten his Veſſel, which is what is meant by Jettiſon or Jetſon, is in all Places, permitted to be brought into a general or groſs Average; in which all concerned in Ship, Freight and Cargo, are to bear a proportionable Part of what was ſo ſacrificed for the common Good; and it muſt be made good by the Inſurers in ſuch Proportions as they have underwrote. *Mag. Inſ.* Vol. 1. P. 55.

be

be caſt overboard for the common Safety of the reſt. So likewiſe Goods coming from infected Towns or Places may be caſt overboard; and if an Action be brought at *Common Law*, the Defendant may juſtify the ſame by pleading the ſpecial Matter. If there be a Super-cargo, a Requeſt ought to be made to him to begin firſt; but if he refuſes, the Mariners may proceed. *Molloy*, B. 2. C. 6. §. 6. cites *Leg. Rhod. de Jact. Bracton*, Lib. 2. Fo. 41. b. n. 3. 49 *Ed.* 3. Fo. 15. *Leg. Oleron*, Cap. 18.

3. If the Ship happens to outweather the Storm, and arrives in Safety at the Port of Diſcharge, the Maſter and moſt of the Crew muſt ſwear that the Goods were caſt over for no other Cauſe, but purely *for the Safety of the Ship and Lading*. *Molloy*, B. 2. C. 6. §. 2. *Leg. Wiſbicenſ.* Art. 38, 39.

4. King *William* the Conqueror, and *Henry* I. made and ratified this Law concerning Goods caſt overboard by Mariners in a Storm, in Imitation of the antient *Rhodian Law, de Jact.*

Si ergo jecero res tuas de navi ob metum mortis, de hoc non potes me implacitare; nam licet alteri damnum inferre ob metum mortis, quando periculum evadere non poteſt. Et ſi de hoc me meſces, quod ob metum mortis nil feciſſe de comeſpriorari. Et ea quæ in navi reſtant dividantur in communi ſecundum catalla; & ſi quis jecerit catalla extra navim, quando neceſſitas non exegerit, ea reſtituat. *Molloy*, B. 2. C. 6. §. 3. cites *Leg. Guliel.* 1. & *H.* 1. C. 98. *de Pactis ad Legem Rhodiam. Selden ad Eadmerum, & notæ & ſpicilegium*, F. 183. *Wcelock de priſc. Anglorum legibus*, Fo. 167.

5. When the Ship arrives ſafe, not only thoſe Goods which pay Freight, but ſuch other Goods as are preſerved by the Jettiſon, muſt come into the Average; even Money, Jewels, and Cloaths, are not exempted *. But thoſe Things which are upon a Man's Body,

* In our Time we do not remember ever to have met with any Regulation of a general Average, where the Apparel and Jewels of Paſſengers were brought into the Contribution, as it is a common

Body, Victuals and the like, put on ſhip-board to be ſpent, are totally excluded from the Contribution.

The Maſter ought to be careful, that only thoſe Things of the *leaſt Value*, and *greateſt Weight*, be flung over board. *Molloy*, B. 2. C. 6. §. 4. cites *Leg.* 1. and 2. *ad Leg. Rhod. & Leg. Oleron. Leg. Wiſbicenſ. Art.* 20, 21.

6. In the Rating of Goods by Way of Contribution, this Order is to be obſerved: If they chance to be caſt over-board before half the Voyage be performed, then they are to be eſtimated at the Price they coſt; if after, then at the Price the reſt ſhall be ſold for at the Place of Diſcharge. *Molloy*, B. 2. C. 6. §. 4. cites *Locinius*, Lib. 2. C. 7. *de Jactu*, & 8. *de Contributione*.

7. The Sea Laws of trading Countries differ greatly in fixing the Prices, at which Goods thrown overboard ſhall be made good, and for what Value thoſe ſaved are to contribute. According to the old Laws in the *Conſolato del Mare*, Cap. 95; the Statutes of *Genoa*, Lib. 4. Cap. 17. the Ordinances of *Rotterdam*, *Stockholm* and *Copenhagen*, if the Accident which occaſioned the general Average happened before half the Voyage was performed, the Jettiſon is to be eſtimated at the Price it coſt; but if after, then at the

mon Rule that what pays no Freight pays no Average.——It is cuſtomary in *London*, and moſt other Countries, for the Preſervation of whatever Gold, Silver, or Jewels pay Freight in Merchant-Ships, to contribute to Jettiſon for their full Value: for the Maſters being obliged by all Sea Laws to throw out, in caſe of Need, what is heavieſt and of leaſt Value, and the Worth of ſuch precious Commodities being known, the Care of them will be increaſed in Proportion to their Worth, to prevent their being thrown overboard, promiſcuouſly with other Things: And hence their Preſervation redounds to the common Benefit. There is a Difference, nevertheleſs, when theſe rich Wares come by King's Ships, or Packet boats, as ſuch Veſſels never pay nor receive any Average. The Reaſon is; In Goods belonging to his Majeſty, all his Subjects in general are concerned; wherefore for any particular Loſs of them no particular Contribution is neceſſary, becauſe it is ſupplied by the general Contribution of the whole Community. *Mag. Inſ.* Vol. 1. p. 62, 63.

Price

Price which the reſt ſuch like Goods ſhall be ſold for at the Place of Diſcharge, Freights, Duties, and ordinary Charges deducted. But the new Ordinance of *Amſterdam*, in 1744, ſeems to differ ſomething from this Cuſtom, ſaying, that only in Caſes of Detentions and Ranſoms, the Contribution ſhall be made in thoſe two different Manners of Valuation. The Ordinance of *Antwerp* in 1563, by *Philip* II. the *Recopilation de las Leyes de Indias*, the old Statutes of *Hamburgh* of 1603, the Ordinances of *Lewis* XIV. and of *Coningſberg*, all agree, that the Goods ſaved and loſt ſhall be rated at the Market-price which thoſe ſaved ſell for; and a Contribution be made accordingly, after deducting Freight and Charges. But the new Ordinance of *Hamburgh* in 1731, deviates from their former Statutes in this Particular, by ordaining that in Caſes of general Average, the Goods ſhall be eſtimated according to their Invoice, with the Addition of all Charges, except Premium of Inſurance. Now this Difference naturally gives riſe to the following Queſtion, *viz.* Which is the juſteſt Way, to reckon the Goods according to their Value at the Place they came from, or according to their Value at the Place where they are landed? In Anſwer, we think there is no Manner of Doubt, but that if the Ship arrived in Safety at her deſtined Port, both the Goods thrown over-board, and thoſe delivered, ought to be valued at the Price they might have yielded, or did yield there, whether the Jettiſon was made before they came half the Way, or after: For if the Goods ſaved by this Jettiſon arrived at the Place they were deſtined for, and there produced double what they coſt, it would be unreaſonable that one Half of ſuch Produce ſhould contribute nothing to what was caſt away: Nor would it, on the contrary, be reaſonable to make the Goods ſaved (if they came to a loſing Market) pay for more than they produced; or ſuppoſe they were ſuch as had ſuffered by their own periſhable Nature, what Reaſon could there be to make them contribute to the Value of their Coſt? It appears

pears by *Malynes's Lex Mercatoria*, Cap. 26. that this Diſtinction was likewiſe obſerved in *England* in 1622, (the Time in which he wrote) of rating the Goods at prime Coſt, if the Jettiſon happened before half the Voyage was performed; and if after, at the Price that the reſt, or like Goods, ſold for at the Place of Diſcharge. An Inſtance happened lately wherein the Concerned agreed, that the Goods ſaved, and thoſe thrown over-board ſhould be rated at firſt Coſt. As there is no Law in *England* that poſitively directs what Method is to be obſerved in theſe Caſes, the Inſurers, as well as the Inſured, are bound by the Determination of Referees.

Molloy, in his Treatiſe *de Jure Maritimo* (B. 2. C. 6. §. 16.) remarks that in his Time the general Cuſtom was, that the Goods ſaved and thoſe loſt ſhould be eſtimated at the Rate which thoſe ſaved were ſold for; Freight and other neceſſary Charges deducted. And this, by what we have ſeen tranſacted in ſuch Affairs, ſeem to be now the prevailing Cuſtom in *England*. *Mag. Inſ.* Vol. 1. P. 59.

8. If a Lighter, or Skiff, or the Ship's Boat into which Part of the Cargo is unladen for the Lightening, periſh, and the Ship be preſerved, in that Caſe Contribution is to be made; but if the Ship be caſt away, and the Lighter, Boat, or Skiff, be preſerved, there is no Contribution or Average to be had, it being a Rule, *No Contribution but where the Ship arrives in Safety*. *Molloy*, B. 2. C. 6. §. 12. See the following Paragraph.

9. If the Ship, after having made Jettiſon, or cut away her Cables, Maſts, *&c.* at one Place, is ſtranded at another, each concerned muſt bear his own Loſs, or remain poſſeſſed of what is ſaved of his Property. For Inſtance: A maſter bound for *Cadiz* is obliged by a Storm in the *Downs* to cut away two Cables, and get to Sea; by which Means he cleared his Ship from the great Danger he was there expoſed to: But he afterwards had the Misfortune to run his Ship aſhore near *Plymouth*, where the major Part of his

Cargo

Cargo was ſaved. In this Caſe the Owners of the Ship have no Right to demand that the Proprietors of the Goods ſaved ſhall contribute towards the Cables and Anchors left in the *Downs*, notwithſtanding the imminent Danger of loſing the Ship on the *Goodwin* Sands (where there was no Probability that any thing could be ſaved) which could only be guarded againſt by the Method taken of cutting away the two Cables. From hence it follows, that if nothing had been ſaved of the Cargo, and the Cables and Anchors had afterwards been recovered, they would remain the ſole Property of the Owners of the Ship, at leaſt till the Proprietors of the Goods had actually paid for, or contributed towards the Loſs of theſe Cables and Anchors. This is an old Law, and the Cuſtom of many Places †. If a deep loaden Ship be obliged to take out a Part of her Cargo, previous to her paſſing ſome Shoals or Flats, which, without ſuch Lightening, hinder her getting to her deſtined Port, and the Lighters or Boats, in which the Goods of ſuch Cargo are put, ſhould periſh, the Owners of the Goods that remain are to bear an equal Proportion of the Loſs; but if the Ship ſhould be loſt, and the Lighters ſaved, the Owners of the Goods ſo preſerved ſhall not only, remain poſſeſſed of thoſe Goods, but alſo ſhall contribute nothing towards the Loſs of the Ship, and what was in her. This Difference is founded on this, that lightening of this Ship was in Conſequence of a deliberate and voluntary Determination, and for the Good of the whole; whereas the Lighters being ſaved, and the Ship loſt, was owing to an Accident, no ways proceeding from a Regard to the Whole, but a Caſe ſimilar to the ſaving Goods lying neareſt at hand when a Ship is run aſhore.

Let us go ſtill farther, and ſuppoſe, that a Ship running on a Bank, throws overboard all her heavy

† Laws of *Wiſby*, Art. 55. Statutes of *Hamburgh* in 1603. *Malynes's Lex Mercat.* 1622. Cap. 25. Ordinance of *Antwerp* in 1563. Ordinance of *France* in 1681. Ordinance of *Rotterdam* in 1721.

Stores,

Stores, and Part of her Cargo, by which Jettiſon ſhe gets clear, and returns to Sea, yet proves ſo leaky that ſhe is obliged to make for, and take Shelter in the next Harbour, where, upon Examination, ſhe is found in ſo bad a Condition as not to be repaired, and therefore is condemned as unfit to proceed on the Voyage. In this Caſe, notwithſtanding her Loſs proceeds from her having been aſhore, yet as ſhe got clear by the aforeſaid Jettiſon, and the Remainder of the Cargo eſcaped, and arrived ſafe in Harbour, that which was ſo ſaved muſt contribute to the Loſs of what was thrown overboard. But yet whatever Damage the Ship ſuſtained by her running a ground, or the Damage or Loſs any particular Goods ſuffered by this unhappy Accident, muſt be borne by the Ship's Owners, and by the Owners of the Goods, without any Pretence of Indemnification from the Cargo ſaved, their Redreſs being only againſt the Inſurers. *Mag. Inſ.* Vol. 1. P. 57.

10. In the Collection intitled *Conſolato del Mare*, which contains ſome old Laws of *Barcelona*, partly taken as *Werver* ſhews, from thoſe of *Wiſby*, it is ſaid, Cap. 94. "That in caſe of a Jettiſon, the Ship ſhall "contribute for half of its Value: But (Cap. 96.) if "the Maſter receives Freight for his whole Cargo, "the ſame ſhall be included in the general Contri-"bution."

In the Ordinance of *Philip* II. made at *Antwerp*, 1563, it is ſaid, "That the Owners of the Cargo "ſhall have the Option to make the Ship contribute "either for her real Value, or for her whole con-"tracted Freight;" which, as *Werver* affirms in his Annotations upon this Ordinance, P. 118. hath been practiſed in the northern Parts of *Holland*, ever ſince the moſt ancient of their own Sea Laws have been known, which are the Decrees, or Judgments of the City of *Dam* or *Damme*, collected, according to the aforementioned Author's Conjecture, before the Year 1300, and ſtill in Uſe, as appears by the Ordinance of *Rotterdam*.

By the *Recopilacion de Leyes de las Indias* in *Spain*, and the Statutes of *Genoa*, the Ship contributes both for the Whole of her Value and Freight. At *Leghorn* the Cuſtom is, that the Ship ſhall contribute for one half of her Value, and one third of her Freight.

By the Ordinance of *Lewis* XIV. both Ship and Freight are to contribute for one half.

The Ordinances of *Coninſberg*, *Hamburgh*, and *Copenhagen*, all agree, that the Ship is to contribute for the Whole of her Value and Freight; which Value is well explained by the ſaid Ordinance of *Hamburgh*, which directs that the Value of the Ship ſhall be no other than ſhe was really worth in the Condition ſhe arrived; and that from the Freight a Deduction ſhall be made of the Men's Wages, Pilotage, and ſuch other Charges as are diſtinguiſhed there by the Denomination of *petty*, *ordinary*, *or common Average*, of which it is cuſtomary every where for the Cargo to bear two thirds, and the Ship one. The Difference of the Ordinances of ſeveral States in the Manner of ſettling the Ship's Contribution, is eaſily reconciled; for it proceeds from the ſame Grounds, *viz.* the Impoſſibility of employing a Ship in any Voyage without Wear and Tear, and conſequently loſing of that Value ſhe had when he commenced it; and the Suppoſition that one half, or one third of her Freight would be expended in paying Mens Wages and other Charges. The above mentioned Law of *France*, that the Ship ſhall contribute for a Moiety of her Freight, as well as her Value, is to be underſtood only of the groſs Freight. The Ordinance of *Coningſberg*, mentioned above, is defective both in this Point and the Method of valuing the Veſſel; and wants Explanation. The right and juſt Way of calculating is to be found in the laſt named modern Ordinance of *Copenhagen*, which enacts that the neat Freight, and full Worth of the Ship, (after making proper Allowances for what ſhe diminiſhed in Value by the ordinary Courſe of the Voyage, and the extraordinary Accident that occaſioned the general Average) ſhall contribute

tribute their Share or Part in a general Average. *Mag. Inſ.* Vol. 1. P. 57.

11. If a Ship happens to be taken, and the Maſter, to redeem the Ship and Lading out of the Enemies or Pirates Hands, promiſes them a certain Sum of Money, for Performance whereof himſelf becomes a Pledge or Captive in the Cuſtody of the Captor: In this Caſe he is to be redeemed at the Coſts and Charges of the Ship and Lading*. *Leg. Rhod. de Jactu*, L. 2. *Si navis, &c.*

So where a Pirate takes Part of the Goods to ſpare the reſt, Contribution muſt be paid.

But if a Pirate takes by Violence Part of the Goods, the reſt are not Subject to Average, unleſs the Maſter hath made an expreſs Agreement to pay it after the Ship is robbed. *Moor*, Fo. 297. Pl. 443. *Hicks* v. *Palington.*

But if Part of the Goods are taken by an Enemy, or by Letters of Mart and Repriſal, *é contra.* So likewiſe in a Storm, if the ſame is done for Preſervation of the Remainder. *Molloy*, B. 2. Cap. 6. §. 13.

12. A Ship was taken by a *French* Privateer, and the maſter of her ranſomed for 1800 *l.* (the Maſter having a Share in the Ship.) The Mate was carried into *France* as an Hoſtage for this Money. Lord Chancellor ſaid, the Ranſom Money muſt be raiſed out of the firſt Profits, notwithſtanding any former Mortgage of the Ship; for if there was a precedent Mortgage, what would have become of the Security, if the Ship had not been redeemed? After the Ship was redeemed, ſhe performed her intended Voyage, and the Freight-money earned after her Redemption was the Profits ariſing, and out of theſe the Ranſom-money is to be ſatisfied. This was upon Motion. The Lord Chancellor ſaid, the Inſurers always paid Part of the Ranſom-money. *Molloy*, B. 2. C. 6. §. 13. cites *Hill.* 7 *Anne* in Chan. *Lopes* and *Winter.*

* He may hypothecate the Ship for his own Redemption. *L. Raym.* 22.

13. Contribution is to be paid for the Pilot's Fee who hath brought a Ship into a Port or Haven for her Safeguard (it being not the Place ſhe was deſigned for.) So to raiſe her off the Ground, when there is no Fault in the Maſter.

If a Maſter of a Ship lets out his Ship to Freight, and then receives his Complement, and afterwards takes in Goods without Leave of the Freighters, and a Storm ariſes at Sea, and Part of the Freighters Goods are caſt overboard, the remaining Goods are not ſubject to the Average, but the Maſter muſt make good the Loſs out of his own Purſe. *Molloy*, B. 2. C. 6. §. 15. cites *Grotius Introd. Jur. Holl.* 329. *Vinnius* and *Peckeus* Commentaries on the Laws of *Rhodes*.

SECT. XIV.

Of Inſurances from Fire; and the Propoſals of the Royal Exchange *and* London *Aſſurance Companies for that Purpoſe.*

1. INſurances from Fire are introduced into ſeveral Countries, though not every where under that Denomination. At *Hamburgh* there is a *Fire Caſſa* of an old ſtanding, wherein the principal Houſes are inſured at the Value of 15000 Marks (which is about 1000*l.* Sterling) to be paid in Caſe of their being burnt; the Inſured paying yearly one fourth of a Mark for every thouſand Marks for Expences. Every one concerned in this Office, or *Fire Caſſa*, contributes to a Loſs in Proportion to what his own Houſe ſtands inſured for; but no Houſe is valued at more than 15000 Marks, though it may have coſt ten times that Sum in building. We can account for this Limitation no otherwiſe, than by ſuppoſing the Intention of the Legiſlature to have been to curb by this Valuation the Pride of the Citizens, and hinder them from being too magnificent in their Buildings: A very wiſe Maxim certainly in a trading City!

In *London*, Inſurances from Fire are obtainable at

ſuch eaſy Rates, that there are few Merchants but chooſe to be inſured for their own Quiet. Beſides, this Precaution adds to their Credit both at home and abroad, when it is known that the great Capitals lying in their Houſes and Warehouſes are thus ſecured from the Flames. *Mag. Inſ.* Vol. 1. P. 31.

Propoſals *by the* Corporation *of the* London-Aſſurance, *eſtabliſhed by his Majeſty's* Royal Charter, *for aſſuring Houſes and other Buildings, Goods, Wares, and Merchandizes*, from Loſs *or* Damage *by* Fire; *and for* aſſuring Lives.

2. Whereas the aſſuring from Loſs or Damage by Fire, tends to the Preſervation of many Families from that Poverty and Ruin which ſuch a Calamity might otherwiſe expoſe them to;

Therefore his Moſt Gracious Majeſty, being deſirous of promoting and encouraging ſuch lawful and commendable Undertakings, as are for the Benefit and Security of all his loving Subjects, *hath granted* to this Corporation, his Royal Charter: By Virtue whereof they Aſſure Houſes and Buildings, Houſhold Furniture (Wearing Apparel by ſpecial Agreement) and Goods, Wares, and Merchandize, being the Property of the Aſſured, or on Commiſſion (*except* Glaſs and China Ware, not in Trade, and all Manner of Writings, Books of Accompts, Notes, Bills, Bonds, Tallies, Ready Money, Jewels, Plate, Pictures, Gunpowder, Hay, Straw, and Corn unthraſhed) from Loſs or Damage by Fire, upon the following Terms and Conditions.

ARTICLE I.

This Corporation will aſſure all Manner of Buildings having Walls of Brick or Stone, and covered with Slate, Tile or Lead, wherein no hazardous Trades are carried on, nor any hazardous Goods depoſited, at the annual Premium, ſet down under the Head of Common Aſſurances, in the Table N° I. And Goods and Merchandize not hazardous in Brick or Stone Buildings, after the ſame Rates.

ARTICLE

ARTICLE II.

For the Accommodation of ſuch Perſons as are deſirous of being aſſured for a Term of Years, this Corporation will aſſure (on ſuch Buildings or Goods as aforeſaid) any Sum not exceeding 1000 *l.* at the Rate of *Twelve Shillings per Cent.* for *Seven* Years, and as far as 2000 *l.* at the Rate of *Fourteen Shillings per Cent.* for the like Term of *Seven* Years, without ſubjecting the Aſſured to any Calls or Contributions to make good Loſſes.

ARTICLE III.

Aſſurances on Buildings and Goods, are deemed diſtinct and ſeparate Adventures; ſo that the Premium on Goods is not advanced by reaſon of any Aſſurance on the Building wherein the Goods are kept, nor the Premium on the Building by reaſon of any Aſſurance on the Goods.

ARTICLE IV.

Timber or Plaiſter Buildings, covered with Slate, Tile, or Lead, wherein no hazardous Trades are carried on, nor any hazardous Goods depoſited: And Goods or Merchandize not hazardous, in ſuch Buildings may be aſſured at the annual Premium ſet down under the Head of hazardous Aſſurances in Table N° II.*

ARTICLE V.

Hazardous Trades, ſuch as Apothecaries, Bread and Biſket Bakers, Colourmen, Ship and Tallow-Chandlers, Innholders and Stable-keepers, carried on in Brick or Stone Buildings, covered with Slate, Tile or Lead; and hazardous Goods, ſuch as Hemp, Flax, Pitch, Tar, Tallow, and Turpentine, depoſited in ſuch Buildings, may be aſſured at the annual Premiums, ſet down under the Head of hazardous Aſſurances, in the aforeſaid Table N° II.

ARTICLE VI.

Any of the aforeſaid hazardous Trades carried on, or hazardous Goods depoſited in Timber or Plaiſter Buildings, Earthen, Glaſs, and China Ware in Trade,

* Page 342.

and Thatched Buildings, or Goods therein, may be aſſured at the annual Premiums ſet down under the Head of double Hazardous Aſſurances, in Table N° III.

ARTICLE VII.

Deal-Yards, alſo Chemiſts, Diſtillers, Sugar Bakers, Maltſters, or any other Aſſurances more than ordinarily hazardous, by reaſon of the Trade, Nature of the Goods, Narrowneſs of the Place, or other dangerous Circumſtances, may be made by ſpecial Agreement.

ARTICLE VIII.

Two Dwelling-houſes, or any one Dwelling-houſe, and the Out-houſes thereunto belonging, or any one Dwelling-houſe and Goods therein, may be included in the Sum of 200 *l.* But when ſeveral Buildings or Buildings and Goods are aſſured in the ſame Policy, the Sum aſſured on each is to be particularly mentioned.

ARTICLE IX.

To prevent Frauds, if any Buildings or Goods aſſured with this Corporation, are, or ſhall be aſſured with any other Corporation or Society, the Policy granted by this Corporation is to be null and void, unleſs ſuch other Aſſurance is allowed by Indorſement on the Policy.

ARTICLE X.

No Policy is to be of any Force, till the Premium for one Year is paid. And for all ſubſequent annual Premiums, the Aſſured are to take Receipts, ſtamped with the Seal of the Corporation, no other being allowed of.

ARTICLE XI.

No Policy is to be extended, or conſtrued to extend to the Aſſurance of any hazardous Buildings or Goods, unleſs they are expreſly mentioned in the Policy, and the proper Premium for ſuch Aſſurances be paid for the ſame.

ARTICLE XII.

No Loſs or Damage by Fire happening by an Invaſion, foreign Enemy, or any Military or uſurped Power whatſoever, is to be made good.

ARTICLE

ARTICLE XIII.

All Perſons aſſured by this Corporation, are upon any Loſs or Damage by Fire, forthwith to give Notice thereof, by Letter or otherwiſe, to the Directors or Secretary, at their Houſe in *London:* and within fifteen Days after ſuch Fire, deliver in as particular an Account of their Loſs or Damage, as the Nature of the Caſe will admit of, and make Proof of the ſame, by the Oath or Affirmation of themſelves, their Domeſticks or Servants, or by their Books of Accounts, or other proper Vouchers, as ſhall be required; and alſo to procure a Certificate under the Hands of the Miniſter and Church-Wardens, together with ſome other reputable Inhabitants of the Pariſh, not concerned in ſuch Loſs; importing, that they are well acquainted with the Character and Circumſtances of the Sufferers; and do know, or verily believe, that he, ſhe, or they, have really, and by Misfortune, ſuſtained by ſuch Fire, the Loſs and Damage therein mentioned. And in Caſe any Difference ſhall ariſe between the Corporation and the Aſſured, touching any Loſs or Damage, ſuch Difference ſhall be ſubmitted to the Judgment and Determination of Arbitrators indifferently choſen, whoſe Award in Writing ſhall be concluſive and binding to all Parties. And when any Loſs or Damage is ſettled and adjuſted, the Sufferer or Sufferers are to receive immediate Satisfaction for the ſame.

ARTICLE XIV.

In adjuſting Loſſes on Houſes, no Wainſcot, Sculpture or Carved-work, is to be valued at more than Three Shillings *per* Yard.

N. B. There is no Average-Clauſe in the Policies of this Corporation, but the Aſſured, in Caſe of Loſs, receive the full Damage ſuſtained, deducting only Three *per Cent.* according to the Terms of the Policy.

Perſons aſſured by this Corporation do not depend upon an *uncertain Fund* or *Contribution*, nor are they ſubject to any *Covenants* or *Calls* to make good Loſſes which may happen to *themſelves* or *others*. The Ca-

pital Stock of this Corporation being an unqueſtionable Security to the Aſſured in Caſe of Loſs or Damage by Fire, and in Caſe of ſuch Loſs or Damage the Aſſured have as eaſy Methods of Recovery as can be had againſt any Perſon or Society whatſoever.

For the timely Aſſiſtance of ſuch as are aſſured by this Corporation, they have provided ſeveral Engines and Water-men, with proper Inſtruments to extinguiſh Fires, and Porters for removing Goods, all cloathed in Green, and having every one a Badge, with the following Figure, *viz.* A *Britannia*, holding a Harp, and ſupported by the *London* Arms, to diſtinguiſh them from Servants belonging to other Offices, and the Badges are all numbered; of which all Perſons are deſired to take Notice, who entruſt them with Goods, or have any Complaint to make.

The ſame Figure as on the Badges will be affixed on Buildings, *&c.* aſſured by this Corporation.

TABLE *of Annual Premiums to be paid for Fire-Aſſurances.*

N° I. Common Aſſurances.

Any Sum not exceeding ——— 200 *l.* ——— at 4 *s. per Annum.*

Any Sum above { 200 *l.* / 1000 *l.* } Not exceeding { 1000 *l.* at—2 *s.* / 3000 *l.* at—2 *s.* 6 *d.* } *per Cent. per Annum.*

N° II. Hazardous Aſſurances.

Any Sum not exceeding ——— 200 *l.* ——— at 6 *s. per Annum.*

Any Sum above { 200 *l.* / 1000 *l.* / 2000 *l.* } Not exceeding { 1000 *l.*—at 3 *s.* / 2000 *l.*—at 4 *s.* / 3000 *l.*—at 5 *s.* } *per Cent. per Annum.*

N° III. Double Hazardous Aſſurances.

Any Sum not exceeding ——— 200 *l.* ——— at 10 *s. per Annum.*

Any Sum above { 200 *l.* / 1000 *l.* } Not exceeding { 1000 *l.* —at 5 *s.* / 2000 *l.* —at 7 *s.* 6 *d.* } *per Cent. per Annum.*

N. B. Large Sums, and ſome of the Goods excepted in the Preamble, may be aſſured by ſpecial Agreement.

Aſſurance

Aſſurance on Lives.

And whereas it hath been by Experience found to be a Benefit and Advantage, for Perſons having Offices, Employments, Eſtates, or other Incomes determinable upon the Life or Lives of themſelves or others, to make Aſſurance of the Life or Lives upon which ſuch Offices, Employments, Eſtates or Incomes are determinable; His Majeſty hath been likewiſe graciouſly pleaſed to grant to this Corporation, full Power and Authority to aſſure the Life or Lives of any Perſon or Perſons whomſoever: which they are ready to do on reaſonable Terms.

Propoſals *by the* Corporation *of the* Royal Exchange Aſſurance, *eſtabliſhed by his Majeſty's* Royal Charter, *for aſſuring Houſes and other Buildings, Goods, Wares and Merchandizes, from* Loſs *or* Damage *by* Fire.

Whereas the aſſuring from Loſs or Damage by Fire, tends to the Preſervation of many Families from that Poverty and Ruin, which ſuch a Calamity might otherwiſe expoſe them to;

Therefore *his Moſt gracious Majeſty*, being deſirous of promoting and encouraging ſuch lawful and commendable Undertakings, as are for the Benefit and Security of all his Loving Subjects, *hath granted*, to this Corporation, his Royal Charter: By Virtue whereof, they aſſure Houſes and Buildings, Houſhold Furniture, Goods, Wares, and Merchandizes, being the Property of the Aſſured, or on Commiſſion (*except* Glaſs and China-Ware not in Trade) and all Manner of Writings, Books of Accompts, Notes, Bills, Bonds, Tallies, Ready Money, Jewels, Plate, Pictures, wearing Apparel, Gun-powder, Hay, Straw, and Corn (unthreſhed) from Loſs or Damage by Fire, upon the following Terms and Conditions:

ARTICLE I.

This Corporation will aſſure all Manner of Buildings having the Walls of Brick or Stone, and covered with Slate, Tile, or Lead, wherein no hazardous Trades are carried on, nor any hazardous Goods de-

poſited, at the annual Premiums ſet down under the Head of common Aſſurances in the Table N° I. * and Goods and Merchandizes not hazardous, in Brick or Stone Building after the ſame Rates.

ARTICLE II.

For Accommodation of ſuch Perſons as are deſirous of being Aſſured for a Term of Years, this Corporation will Aſſure (on ſuch Buildings or Goods as aforeſaid) any Sum not exceeding 1000*l.* at the Rate of *Twelve Shillings per Cent.* for *Seven* Years, and as far as 2000*l.* at the Rate of *Fourteen Shillings per Cent.* for the like Term of *Seven* Years, without ſubjecting the Aſſured to any Calls or Contribution to make good Loſſes.

ARTICLE III.

Aſſurances on Buildings, and Goods, are deemed diſtinct and ſeparate Adventures, ſo that the Premium on Goods is not advanced by reaſon of any Aſſurance on the Building wherein the Goods are kept, nor the Premium on the Building by reaſon of any Aſſurance on the Goods.

ARTICLE IV.

Timber or Plaiſter-Buildings, covered with Slate, Tile, or Lead, wherein no hazardous Trades are carried on, nor any hazardous Goods depoſited; and Goods or Merchandizes not hazardous, in ſuch Timber or Plaiſter-buildings, may be aſſured at the annual Premiums ſet down under the Head of hazardous Aſſurances, in the Table N° II.

ARTICLE V.

Hazardous Trades, ſuch as Apothecaries, Bread and Biſket-bakers, Colour-men, Ship and Tallow-Chandlers, Innholders, Maltſters, and Stable-keepers carried on in Brick or Stone Buildings, covered with Slate, Tile, or Lead; and hazardous Goods, ſuch as Hemp, Flax, Pitch, Tar, Tallow, and Turpentine, depoſited in ſuch Buildings, may be aſſured at the annual Premiums ſet down under the Head of hazardous Aſſurances in the aforeſaid Table N° II.

* Page 347.

ARTICLE

ARTICLE VI.

Any of the aforeſaid hazardous Trades carried on, or hazardous Goods depoſited in Timber or Plaiſter-buildings; Earthen, Glaſs, and China-ware in Trade, and thatched Buildings, or Goods therein, may be Aſſured at the annual Premiums ſet down under the Head of doubly hazardous Aſſurances, in the Table N° III.

ARTICLE VII.

Aſſurances of Houſes and Goods on *London-bridge*, Mills, Wearing-Apparel, and Aſſurances to Chemiſts, Diſtillers, and Sugar-Bakers, or any other Aſſurances more than ordinarily hazardous, by reaſon of the Trade, Nature of the Goods, Narrowneſs of the Place, or other dangerous Circumſtances, may be made by ſpecial Agreement.

ARTICLE VIII.

Two Dwelling-houſes, or any one Dwelling-houſe, and the Out-houſes thereunto belonging, or any one Dwelling-houſe and Goods therein, may be included in the Sum of 100*l.* But when ſeveral Buildings, or Buildings and Goods are aſſured in the ſame Policy, the Sum aſſured on each is to be particularly mentioned.

ARTICLE IX.

To prevent Frauds, if any Buildings or Goods aſſured by this Corporation, are, or ſhall be aſſured with any other Corporation or Society, the Policy granted by this Corporation is null and void, unleſs ſuch other Aſſurance is allowed by Indorſement on the Policy.

ARTICLE X.

Every Perſon upon Application to be Aſſured with this Company, is to depoſit 8*s.* and 6*d.* for the Policy and Mark, which 8*s.* and 6*d.* is to be returned, if the Aſſurance propoſed is not agreed to. No Policy is to be of any Force, till the Premium for one Year is paid. And for all ſubſequent annual Payments made at the Office, the Aſſured are to take Receipts, ſtamped with the Seal of the Corporation, no other being allowed of.

ARTICLE XI.

No Policy is to be extended, or conſtrued to extend to the Aſſurance of any hazardous Buildings or Goods, unleſs they are expreſsly mentioned in the Policy, and the reſpective Premium for ſuch Aſſurance be paid for the ſame.

ARTICLE XII.

No Loſs or Damage by Fire happening by any Invaſion, foreign Enemy, or any military or uſurped Power whatſoever, is to be made good.

ARTICLE XIII.

All Perſons aſſured by this Corporation, are, upon any Loſs or Damage by Fire, forthwith to give Notice thereof by Letter or otherwiſe, to the Directors or Secretary, at their Office on the *Royal Exchange*, *London*; and within fifteen Days after ſuch Fire, deliver in as particular an Account of their Loſs or Damage, as the Nature of the Caſe will admit of, and make Proof of the ſame, by the Oath or Affirmation of themſelves and their Domeſticks, or Servants, and by their Books of Accompts, or other proper Vouchers, as ſhall be required; and alſo to procure a Certificate under the Hands of a Miniſter and Church-Wardens, together with ſome other reputable Inhabitants of the Pariſh not concerned in ſuch Loſs; importing, that they are well acquainted with the Character and Circumſtances of the Sufferer or Sufferers; and do know, or verily believe, that he, ſhe, or they, have really and by Misfortune, ſuſtained by ſuch Fire, the Loſs and Damage therein mentioned. And in caſe any Difference ſhall ariſe between the Corporation and the Aſſured, touching any Loſs or Damage, ſuch Difference ſhall be ſubmitted to the Judgment and Determination of Arbitrators indifferently choſen, whoſe Award in Writing ſhall be concluſive and binding to all Parties. And when any Loſs or Damage is ſettled and adjuſted, the Sufferer or Sufferers are to receive immediate Satisfaction for the ſame.

In adjuſting Loſſes on Houſes, no Wainſcot, Painting, Sculpture, or Carved-Work is to be valued at more than Three Shillings *per* Yard.

Perſons

Perſons Aſſured by this Corporation do not depend upon any *uncertain* Fund or *Contribution*, nor are they ſubject to any *Covenants* or *Calls* to make good Loſſes which may happen to *themſelves* or *others*; the capital Stock of this Corporation being an unqueſtionable Security to the Aſſured, in Caſe of Loſs or Damage by Fire. And in Caſe of Diſpute, the Aſſureds have a more ready and effectual Method of Recovery than can be had againſt any Societies who do not act under a Common Seal.

N. B. For the timely Aſſiſtance of ſuch as are Aſſured by this Corporation, they have provided ſeveral Engines and Watermen with proper Inſtruments to extinguiſh Fires; and Porters for removing Goods, having every one a Badge with the Figure of the *Royal Exchange*, to diſtinguiſh them from Servants belonging to other Offices, and the Badges are all numbered; of which all Perſons are deſired to take Notice, who entruſt them with Goods, or have any Complaint to make.

The ſame Figure as aforeſaid will be affixed on Buildings, *&c.* aſſured by this Corporation.

Table of Annual Premiums to be paid for Fire-Aſſurances.

N° I. Common Aſſurances.

Any Sum above { 100*l.* / 1000*l.* / 2000*l.* } Not exceeding { 1000*l.* — at 2*s.* — / 2000 / 3000 } — at 2*s.* 6*d.* *per Cent. per Annum.*

N° II. Hazardous Aſſurances.

Any Sum above { 100*l.* / 1000*l.* / 2000*l.* } Not exceeding { 1000*l.* — at 3*s.* — / 2000*l.* — at 4*s.* — / 3000*l.* — at 5*s.* — } *per Cent. per Annum.*

N° III. Double Hazardous Aſſurance.

Any Sum above { 100*l.* / 1000*l.* / 2000*l.* } Not exceeding { 1000*l.* — at 5*s.* — / 2000 / 3000 } — at 7*s.* 6*d.* *per Cent. per Annum.*

N. B. Any larger Sums, and ſome of the Goods excepted in the Preamble, may be aſſured by Special Agreement,

Aſſurance

Assurance on Lives.

And whereas it hath been found by Experience to be of Benefit and Advantage, for Persons having Offices, Employments, Estates, or other Incomes, determinable on the Life or Lives of themselves or others, to make Assurances on the Life or Lives, upon which such Offices, Employments, Estates, or Incomes are determinable; his Majesty hath been likewise graciously pleased to grant to this Corporation full Power and Authority to assure on the Life or Lives of any Person or Persons; which they are ready to do on Reasonable Terms.

4. It is well known that each of these Companies raised about 450,000*l.* the *London* being composed of 36,000 Shares at 12½, and the *Royal* of 4500 Shares at 100*l.* each: So that after having paid to the Government each 150,000*l.* for their Charter, they remained with a Capital of about 300,000*l.* each, under the Care of their Directors, to be disposed of for the Benefit of the Proprietors: Which Sums they have kept employed ever since in Loans to the Government, and upon private Pledges, so as to enable them to make certain yearly Dividends, and to be always ready to satisfy the Demands of any Persons who make Insurances with them, whenever the Premiums which they have gained are insufficient to do it: And as the Act gives them leave to raise in the whole 1,500,000*l.* each, which is 1,50,000*l.* more for each Company; all this together makes good Security for what Insurances are made with them. By the Price which the Shares of each Company bear at Market we may judge what Opinion the Publick has of the Value of their Stock. The Price of the *London* Assurance Company has been, generally at 12½ to £14*l.* *per* Share; and computing it at 12½ it makes about 450,000*l.* And indeed it is no Wonder that in the Space of about 40 Years they should have had the Success to lay up again for their Proprietors the 150,000*l.* which were paid for their Charter,

Charter, and now actually repoſſeſs their primary Capital of 450,000 *l.* or more. And as for many Years they have conſtantly made a Dividend of 10 *s.* *per* Share, which is at the Rate of 4 *per Cent.* and more than the Proprietors could clear by Intereſt, it ſhews that the Buſineſs of Inſuring muſt have yielded a reaſonable Profit to the Company.

The Capital of 450,000 *l.* in Hand, received from the Proprietors, and a Power to call for 1,050,000 *l.* more, with all the Premiums not run off (which in Courſe muſt be kept back) is a Fund much ſuperior to what any Eſtabliſhment of this Nature in neighbouring States has afforded, or is likely to afford. Nor indeed can it be expected that any Company abroad ſhould meet with the like Succeſs, when Premiums are ſo much lower; or that it would be worth the while for any new one at Home to give more than 150,000 *l.* for a Charter.

Hence, if no extraordinary Events happen, and the ſame good Management is kept up, theſe may be Companies of long ſtanding, beneficial to their Proprietors, and ſtill more ſo to the Trade of *England* in general, for which it is certainly much better to have two ſuch capital Offices, than one; beſides the great Number of ſubſtantial private Perſons who underwrite Policies. *Mag. Inſ.* Vol. 2. P. 372.

SECT. XV.

Of Ship-wreck, Flotſam, Jetſam, Lagan and Salvage.

1. *WRecum Maris*, are ſuch Goods only as are caſt and left upon the Land by the Sea. 5 Co. 106. *a.*

Flotſam, is when a Ship is ſunk, or otherwiſe periſhed, and the Goods float upon the Sea. *Ibid.*

Jetſam is when the Ship is in danger to be ſunk, and for lightening the Ship, the Goods are caſt

into the Sea, notwithſtanding which the Ship periſheth. *Ibid.*

Lagan vel ligan, is when the Goods being heavy, are caſt into the Sea before the Ship periſhes, which by the Prudence of the Maſter or Mariners, who have an Intent to ſave them ſo ſunk, as that they may come at them again; in order to which they faſten a Buoy or other light Matter, that may ſignify to them where they lie, if Providence ſhould bring them in a Condition to retake them; *et dicitur Ligar a ligando. Ibid. Bracton Lib.* 3. C. 2. *Molloy*, B. 2. C. 5. §. 6.

2. Stat. *Weſtm.* 1. 3 *Ed.* 1. C. 4. where a Man, a Dog, or a Cat, eſcape quick out of the Ship, ſuch Ships or any thing within them, ſhall not be adjudged Wreck; but the Goods ſhall be ſaved and kept by View of the Sheriff, Coroner, or the King's Bailiff, and delivered into the Hands of ſuch as are of the Town, ſo that if any ſue for thoſe Goods, and after prove that they were his, or periſhed in his keeping, within a Year and a Day, they ſhall be reſtored; and if not, they ſhall remain to the King, and be ſeized by the Sheriffs, Coroners, and Bailiffs of the Town; and where Wreck belongeth to another he ſhall have it in like Manner; and he that otherwiſe doth, ſhall be awarded to Priſon, and make Fine at the King's Will, and ſhall yield Damages alſo; and if a Bailiff do it, and it be diſallowed by his Lord, and the Lord will not diſcharge him thereof, the Bailiff ſhall anſwer (if he have whereof) and if he have not, the Lord ſhall deliver the Bailiff's Body to the King.

3. Stat. Preg. Reg. 17 *Ed.* 2. Cap. 11. The King ſhall have Wreck of the Sea, Whales and great Sturgeons, taken in the Sea, or elſewhere, except in Places privileged.

4. Stat. 12 *Ann.* St. 2. Cap. 18. Sect. 1. The Sheriffs, Juſtices of Peace of every County, and all Mayors, Bailiffs, and other Head-Officers of Corporations

rations and Port-Towns near the Sea, and all Conſtables, Head Boroughs, and Officers of the Cuſtoms ſhall, upon Application made to them on behalf of any Commander of a Ship, being in Danger of being ſtranded, or being ſtranded, command the Conſtables of the Ports neareſt the Coaſts where ſuch Ship ſhall be in Danger, to ſummon as many Men as ſhall be thought neceſſary, to the Aſſiſtance of ſuch Ship, and if there ſhall be any Ship belonging to her Majeſty, or her Subjects, riding near the Place, the Officers of the Cuſtoms and Conſtables are required to demand of the ſuperior Officers of ſuch Ship, Aſſiſtance by their Boats, and ſuch Hands as they can conveniently ſpare; and in caſe ſuch ſuperior Officer of ſuch Ship, neglect to give ſuch Aſſiſtance, he ſhall forfeit 100*l.* to be recovered by the Superior Officer of the Ship in Diſtreſs, with Coſts, in any of her Majeſty's Courts of Record.

5. Sect. 2. The Collectors of the Cuſtoms, and the Commanding Officer of any Ships, and all others who ſhall act in the preſerving of any ſuch Ship, in Diſtreſs, or their Cargoes, ſhall within three Days be paid a reaſonable Reward by the Commander or Owners of the Ship in Diſtreſs, or by the Merchant whoſe Ship or Goods ſhall be ſaved; and in Default thereof, the Ship or Goods ſhall remain in the Cuſtody of ſuch Officer of the Cuſtoms, until all Charges be paid, and until the ſaid Officer of the Cuſtoms, and the Maſter or other Officer of the Ship, and all others ſo employed, ſhall be reaſonably gratified, or Security given for that Purpoſe, to the Satisfaction of the Parties; and in caſe after ſuch Salvage, the Commander, Mariners, or Owners of ſuch Ship ſo ſaved, or Merchant whoſe Goods ſhall be ſaved, ſhall diſagree with the Officer of the Cuſtoms, touching the Monies deſerved by any of the Perſons employed, it ſhall be lawful for the Commander of ſuch Ship ſo ſaved, or the Owner of the Goods, or the Merchant intereſted, and alſo for the Officer

Officer of the Cuſtoms, to nominate three of the neighbouring Juſtices of Peace, who ſhall adjuſt the *quantum* of the Gratuities to be paid to the ſeveral Perſons, and ſuch Adjuſtments ſhall be binding to all Parties, and ſhall be recoverable in an Action at Law in any of her Majeſty's Courts of Record; and in caſe no Perſon ſhall appear to make his Claim to the Goods ſaved, the chief Officer of the Cuſtoms of the neareſt Port ſhall apply to three of the neareſt Juſtices of Peace, who ſhall put him or ſome other reſponſible Perſon in Poſſeſſion of the Goods, ſuch Juſtices taking an Account of the Goods to be ſigned by ſuch Officers of the Cuſtoms; and if the Goods ſhall not be claimed within 12 Months, publick Sale ſhall be made thereof (and if periſhable Goods, forthwith to be ſold) and after Charges deducted, the reſidue of the Monies, with an Account of the whole, ſhall be tranſmitted to her Majeſty's Exchequer, for the Benefit of the Owner, who upon Affidavit or other Proof of his Property, to the Satisfaction of one of the Barons, ſhall upon his Order receive the ſame.

6. Sect. 3. If any Perſon beſides thoſe impowered by the Officer of the Cuſtoms, and the Conſtables, ſhall enter or endeavour to enter on board any ſuch Ship in Diſtreſs, without the Leave of the Commander, or of the Officer of the Cuſtoms, or Conſtable; or in caſe any Perſon ſhall moleſt them in the ſaving of the Ship or Goods, or ſhall endeavour to hinder the ſaving of ſuch Ship or Goods, or ſhall deface the Marks of any ſuch Goods, before the ſame be taken down in a Book by the Commander and the firſt Officer of the Cuſtoms; ſuch Perſon ſhall within 20 Days, make double Satisfaction, at the Diſcretion of the two next Juſtices of the Peace, or in Default thereof, ſhall by ſuch Juſtices be ſent to the next Houſe of Correction, where he ſhall be employed in hard Labour 12 Months; and it ſhall be lawful for any Commander or ſuperior Officer of the Ship in Diſtreſs, or the Officer of the Cuſtoms, or Conſtables on board the Ship, to repel by Force any ſuch Perſons

Perſons as ſhall, without Conſent as aforeſaid, preſs on board the ſaid Ship in Diſtreſs, and thereby moleſt them in the Preſervation of the Ship.

7. Sect. 4. In caſe any Goods ſhall be found upon any Perſon, that were ſtolen or carried off from any ſuch Ship in Diſtreſs, he on whom ſuch Goods ſhall be found, ſhall, upon demand, deliver the ſame to the Owner, or to ſuch Perſon by ſuch Owner authorized to receive the ſame, or ſhall be liable to pay treble the Value, to be recovered by ſuch Owner in an Action.

8. Sect. 5. If any Perſon ſhall make, or be aſſiſting in the making, a Hole in any Ship ſo in Diſtreſs, or ſteal any Pump, or ſhall be aiding in the ſtealing ſuch Pump, or ſhall wilfully do any Thing tending to the immediate Loſs of ſuch Ship, ſuch Perſon ſhall be guilty of Felony without Benefit of Clergy.

9. Sect. 6. If any Perſon be proſecuted for any Thing done in Purſuance of this Act, all Perſons ſo ſued, may plead the general Iſſue, and this Act ſhall be a publick Act.

10. Sect. 7. If any Officer of the Cuſtoms ſhall by Fraud, or wilful Neglect, abuſe the Truſt hereby repoſed in him, and ſhall be convicted thereof, ſuch Officers ſhall forfeit treble Damages to the Party grieved, to be recovered in any Court of Record, and ſhall be incapable of any Employment relating to the Cuſtoms.

11. Sect. 8. This Act ſhall be read four Times in the Year in all Churches and Chapels of every Sea-port Town, and upon the Sea Coaſt, upon the Sundays next before *Michaelmas day*, *Chriſtmas-day*, *Lady-day*, and *Midſummer-day* in the Morning, after Prayers, and before Sermon.

12. This Act ſhall not Prejudice her Majeſty, or any Grantee of the Crown, or any Lord of a Manor, or other Perſon in relation to any Right to Wreck, or Goods that are *Flotſam*, *Jetſam*, or *Lagan*.

Made perpetual, 4 *Geo.* 1. C. 12.

Officer of the Cuſtoms, to nominate three of the neighbouring Juſtices of Peace, who ſhall adjuſt the *quantum* of the Gratuities to be paid to the ſeveral Perſons, and ſuch Adjuſtments ſhall be binding to all Parties, and ſhall be recoverable in an Action at Law in any of her Majeſty's Courts of Record; and in caſe no Perſon ſhall appear to make his Claim to the Goods ſaved, the chief Officer of the Cuſtoms of the neareſt Port ſhall apply to three of the neareſt Juſtices of Peace, who ſhall put him or ſome other reſponſible Perſon in Poſſeſſion of the Goods, ſuch Juſtices taking an Account of the Goods to be ſigned by ſuch Officers of the Cuſtoms; and if the Goods ſhall not be claimed within 12 Months, publick Sale ſhall be made thereof (and if periſhable Goods, forthwith to be ſold) and after Charges deducted, the reſidue of the Monies, with an Account of the whole, ſhall be tranſmitted to her Majeſty's Exchequer, for the Benefit of the Owner, who upon Affidavit or other Proof of his Property, to the Satisfaction of one of the Barons, ſhall upon his Order receive the ſame.

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10. Sect. 7. If any Officer of the Cuſtoms ſhall by Fraud, or wilful Neglect, abuſe the Truſt hereby repoſed in him, and ſhall be convicted thereof, ſuch Officers ſhall forfeit treble Damages to the Party grieved, to be recovered in any Court of Record, and ſhall be incapable of any Employment relating to the Cuſtoms.

11. Sect. 8. This Act ſhall be read four Times in the Year in all Churches and Chapels of every Sea-port Town, and upon the Sea Coaſt, upon the Sundays next before *Michaelmas day*, *Chriſtmas-day*, *Lady-day*, and *Midſummer-day* in the Morning, after Prayers, and before Sermon.

12. This Act ſhall not Prejudice her Majeſty, or any Grantee of the Crown, or any Lord of a Manor, or other Perſon in relation to any Right to Wreck, or Goods that are *Flotſam*, *Jetſam*, or *Lagan*.

Made perpetual, 4 *Geo.* 1. C. 12.

13. Stat. 4 *Geo.* 1. Cap. 12. Sect. 2. The Act 12 *Ann.* St. 2. Cap. 18. Shall not affect the ancient Juriſdiction of the Admiralty Court of the *Cinque Ports*, but the Officers of the ſaid Court ſhall put the ſaid Act in Execution within the Juriſdiction of the *Cinque Ports.*

14. Stat. 26 *Geo.* 2. C. 19. The Preamble obſerves, that notwithſtanding the good and ſalutary Laws now in being againſt plundering and deſtroying Veſſels in Diſtreſs, and taking away ſhipwrecked, loſt, or ſtranded Goods, many wicked Enormities have been committed, to the Diſgrace of the Nation, and to the grievous Damage of Merchants and Mariners of our Own and other Countries, and that in Remedy thereof, it is enacted, that if any Perſon ſhall be convicted of plundering, ſtealing, taking away, or deſtroying any Goods, Merchandize, or other Effects, belonging to any Veſſel which ſhall be in Diſtreſs, or which ſhall be wrecked, loſt, ſtranded, or caſt on Shore, in any Part of his Majeſty's Dominions, (whether any living Creature be on board ſuch Veſſel or not) or of any of the Furniture, Tackle, Apparel, Proviſion, or Part of ſuch Veſſel; or of beating or wounding, with Intent to kill or deſtroy, or of wilfully obſtructing the Eſcape of any Perſon endeavouring to ſave his Life from ſuch Veſſel or Wreck; or of putting out any falſe Light to bring any Veſſel into Danger; he ſhall be deemed guilty of Felony, and ſuffer Death without Benefit of Clergy.

When Goods or Effects of ſmall Value, ſtranded, loſt or caſt on Shore, ſhall be ſtolen without Circumſtances of Cruelty, Outrage, or Violence, the Offender may be proſecuted by Way of Indictment for *petit Larceny*, and he ſhall ſuffer, as the Laws in Caſes of *petit Larceny* require.

Any Juſtice upon Information on Oath made before him of any Part of the Cargo or Effects of any Veſſel loſt or ſtranded, being unlawfully carried away or concealed, or of reaſonable Cauſe of Suſpicion thereof, ſhall iſſue his ſearch Warrant: And if ſuch

Goods

Goods ſhall be found in any Houſe, *&c.* or in the Poſſeſſion of any Perſon not legally intitled to keep the ſame, and ſhall not be delivered on Demand to the Owner, or to ſuch Perſon as ſhall be legally authorized to demand them; or if ſuch Perſon ſhall not give a ſatisfactory Account to the Juſtice, how he became poſſeſſed thereof; the Juſtice, upon Proof of ſuch Refuſal, ſhall commit the Offender to the common Gaol for ſix Months, or till he ſhall have paid to the Owner treble the Value of the ſaid Goods.

If any Goods or Effects belonging to any Veſſel loſt, or caſt on Shore, and unlawfully taken away, or reaſonably ſuſpected ſo to have been, ſhall be offered or expoſed to Sale, the Perſon to whom the ſame ſhall be ſo offered or any Officer of the Cuſtoms, or Exciſe, Conſtable, or other Peace-Officer, may ſtop and ſeize the ſame; and ſhall, with all convenient Speed carry them, or give Notice of ſuch Seizure, to ſome Juſtice of the Peace; and if the Perſon who offered the ſaid Goods to ſale, or ſome other on his Behalf, ſhall not appear before the Juſtice within ten Days after, and make out the Property therein to be in him, or in the Perſon by whom he was employed to ſell the ſame, the Juſtice ſhall commit him to the common Gaol for ſix Months, or till Payment of treble the Value of the ſaid Goods to the Owner; and ſhall make Order for the Delivery of the Goods forthwith to the rightful Owner, upon Payment of ſuch a reaſonable Reward, (as the Juſtice ſhall aſcertain,) to the Perſon who ſeized the ſame.

If any Perſon not employed by the Maſter, Mariners, Owners, or other Perſons authorized, in the Salvage of any Veſſel, or the Cargo, or Proviſion thereof, ſhall, in the Abſence of the Perſons ſo employed or authorized, ſave any ſuch Veſſel, Goods, or Effects, and carry the ſame, for the Benefit of the Owners into Port, or to any near adjoining Cuſtom-Houſe, or other Place of ſafe Cuſtody, and give immediate Notice thereof to ſome Magiſtrate, or Cuſtom-Houſe or Exciſe-Officer; or who ſhall diſcover

where any ſuch Goods, *&c.* are wrongfully bought, ſold, or concealed, he ſhall be intitled to a Reward, and the *quantum* thereof ſhall be adjuſted, in Caſe of Diſagreement, as the Act of 12 *Anne*, for preſerving all ſuch Ships, and Goods thereof, which have happened to be forced on Shore, or ſtranded upon the Coaſts of this Kingdom, or any other of her Majeſty's Dominions, directs with Reſpect to Salvage; or elſe in Manner herein after preſcribed, as the Caſe ſhall require.

The Juſtice, Mayor, Bailiff, Collector of the Cuſtoms, or Chief Conſtable, who ſhall be neareſt to the Place where any Ship or Goods ſhall be ſtranded or caſt away, ſhall forthwith give publick Notice for a Meeting to be held, as ſoon as poſſible, of the Sheriff or his Deputy, the Juſtices of the Peace, Mayors, or other Chief Magiſtrates of Towns Corporate, Coroners, or Commiſſioners of the Land Tax, or any five or more of them, who are required to give Aid in the Execution of this and the ſaid former Act; and to employ Perſons for the ſaving of ſuch Ships with their Effects; and to examine Perſons on Oath concerning the ſame, or the Salvage thereof; and to adjuſt the *Quantum* of the Salvage, and diſtribute the ſame, in Caſe of Diſagreement among the Parties concerned; and every ſuch Sheriff, Juſtice, Mayor, Chief Magiſtrate, Coroner, Lord of a Manor, Under Sheriff, or Commiſſioner of the Land Tax, attending and acting at ſuch Meeting, ſhall be paid 4 *s.* a Day for his Expences in ſuch Attendance, out of the Effects ſaved by their Care or Directions.

If the Charges and Rewards for Salvage ſhall not be fully paid, or Security given for the ſame within forty Days, the Officer of the Cuſtoms concerned in ſuch Salvage, may borrow, or raiſe Money ſufficient for that Purpoſe, by one or more Bills of Sale of the Veſſel or Cargo; the ſame to be redeemable upon Repayment of the Principal, with Intereſt for the ſame, after the Rate 4 *l. per Cent. per Annum.*

If

If Oath ſhall be made before a proper Magiſtrate, of any ſuch Plunder or Theft; or of breaking any Ship, contrary to the aforeſaid Act of 12 *Anne*, and the Examination taken thereupon, ſhall be delivered to the Clerk of the Peace, or his Deputy, he ſhall Cauſe the Offender to be proſecuted for the ſame, in the County where the Fact was committed, or in any County next adjoining, in which adjoining County any Indictment may be laid by any other Proſecutor; and if the Fact be committed in *Wales*, the Proſecution ſhall, or may be carried on in the next adjoining *Engliſh* County; and the neceſſary Charges of ſuch Proſecutions, by the Clerk of the Peace, to be aſcertained by the Juſtices at the general Quarter Seſſions, ſhall be paid by the Treaſurer of the County, *&c.* where the Fact ſhall be committed; and if ſuch Clerk of the Peace ſhall neglect or refuſe to carry on ſuch Proſecutions in due Manner, he ſhall forfeit 100 *l.* for every ſuch Offence, to any Perſon who will ſue for the ſame in any of the Courts at *Weſtminſter*.

The Commiſſioners of the Land Tax, the Deputy Sheriff, the Coroner, and the Officers of Exciſe, in each County, Riding, and Diviſion, ſhall be proper Officers for putting in Execution this, and the ſaid Act of 12 *Anne*, together with thoſe Perſons therein reſpectively named for that Purpoſe.

The Lord Warden of the *Cinque Ports*, the Lieutenant of *Dover Caſtle*, the Deputy Warden of the *Cinque Ports*, the Judge Official, and Commiſſary of the Court of Admiralty of the *Cinque Ports*, two antient Towns, and their Members, for the Time being, and every other Perſon appointed by the Lord Warden of the *Cinque Ports*, purſuant to the Act of 4 *Geo.* 1. for the better regulating of Pilots for the conducting of Ships and Veſſels from *Dover*, *Deal*, and the *Iſle of Thanet*, up the Rivers of *Thames* and *Medway*; ſhall within the Liberty and Juriſdiction of the *Cinque Ports*, *&c.* put in Execution the Powers granted by this, and the recited Act of 12 *Anne* and 4 *Geo.* 1. as fully as Juſtices, or other Perſons are

authorized to do in any other Parts of the Kingdom.

If any Perſon ſhall upon Trial by Indictment at the Aſſizes, or at the General or Quarter Seſſions, be convicted of aſſaulting, beating, and wounding any Perſon lawfully authorized on Account of the Exerciſe of his Duty on the Salvage of any Veſſel that ſhall be in Diſtreſs, or ſhall be ſtranded, wrecked, or caſt on Shore, or lying under Water, or of any of the Goods or Effects thereof, he ſhall be tranſported for ſeven Years, and be ſubject to ſuch ſubſequent Puniſhment, in Caſe of Return before that Time, as other Perſons under Sentence of Tranſportation are by Law ſubjected unto.

Any Juſtice in Caſe of need, and in the Abſence of the High Sheriff, may take ſufficient Power of the County to repreſs all unjuſt Violence, and to enforce the Execution of this Act.

All Perſons aſſembled to ſave any Veſſel or Goods, ſhall conform in the firſt Place to the Orders of the Maſter or other Officer or Owners, or other Perſons employed by them; and for want of their Preſence or Directions, then to the Perſons authorized by this, or the aforeſaid Act of 12 *Anne*, in the Manner, and in the following Subordination, as any of them ſhall happen to be preſent, *viz.* in the firſt Place, to the Orders of any Officer or Officers of the Cuſtoms; then of any of the Exciſe; then of the Sheriff or his Deputy; then of any Juſtice of Peace; then of the Mayor, or Chief Magiſtrate of any Corporation; then of the Coroner; then of any Commiſſioners of the Land Tax; then of any Chief Conſtable; then of any Petty Conſtable, or other Peace Officers; and any Perſon acting knowingly and wilfully, contrary to ſuch Orders, ſhall forfeit any Sum not exceeding five Pounds, to be levied by Warrant of one Juſtice; and in Caſe of Non-payment, the Offender ſhall be committed to the Houſe of Correction for any Time not exceeding three Months.

This

This Act ſhall not extend to deprive or prejudice the Crown, or any claiming under it, or any Patentee or Grantee of the Crown, Lord of any Manor, or other Perſon, in any Right which they may lawfully Claim to any Wreck or Goods which ſhall be Flotſam, Jetſam, or Lagan.

The Officer of the Cuſtoms who ſhall Act in the preſerving any Veſſel, or Goods, ſhall as ſoon as conveniently may be, cauſe all Perſons belonging to the ſaid Veſſel, and others who can give an Account thereof, or of the Cargo to be examined on Oath before ſome Juſtice, as to the Name or Deſcription of the Veſſel, and the Names of the Maſter, Commander, or Chief Officer, and Owners thereof, and of the Owners of the Cargo, and of the Ports or Places from, or to which the ſaid Veſſel was bound, and the Occaſion of the Ship's Diſtreſs; and the Juſtice ſhall take down in Writing the ſaid Examination, and deliver a Copy thereof, and of the Account of the Goods, to the ſaid Officer of the Cuſtoms who ſhall forthwith tranſmit the ſame to the Secretary of the Admiralty, who ſhall cauſe ſo much thereof as may be neceſſary, for the Information of Perſons intereſted, to be publiſhed in the next *London Gazette*.

The before mentioned Act of 12 *Anne*, and the Act of 4 *Geo.* 1. for enforcing and making the ſame perpetual, and for inflicting the Puniſhment of Death on ſuch as wilfully burn or deſtroy Ships, ſhall remain in full Force in all Things, where not altered by this Act.

This Act ſhall take Place from 29th *September* 1753.

Nothing in this Act ſhall extend to that Part of *Great Britain* called *Scotland*.

15. If Goods are wrecked on the Shore, and the Lord having Power takes them, he ſhall not pay Cuſtom, neither by the *Common Law*, nor by the *Statute*; for at the *Common Law*, wrecked Goods could not be charged with Cuſtom, becauſe at *Common Law*, all Wreck was wholly the King's, and he could not have

a ſmall Duty of Cuſtom out of that which was all his own; and by *Weſtm.* 1. Where wrecked Goods belonged more to another than to the King, he ſhall have it in like Manner, that is, as the King hath his.

Now Goods that are chargeable with Cuſtom, according to the * Act of Tunnage and Poundage, muſt have theſe Properties.

1. They muſt be Goods which ſhall come or be brought into the Ports or Places of the Kingdom.

2. They muſt come or be brought into ſuch Ports or Places, as Merchandizes, that is, for Sale, and to that end; for there can be no other Conception of Goods brought as Merchandize.

3. They muſt come and be brought as Merchandize, and for Sale by the King's natural born Subjects, or by Strangers and Aliens, as diſtinguiſhed from the natural born Subjects.

4. The Duty payable to the King, is to be meaſured by the Quality of him that Imports the Commodity; that is, if the Importer be a natural Subject, he pays leſs to the King, and if an Alien more.

5. All thoſe Goods charged with the Duty by the Statute, ſo to come, or be brought into Ports or Places of the Kingdom, are to be foreign, as of the Growth of *France*, the *Levant*, *Spain*, *Portugal*, *Germany*, &c.

Whence it follows, 1. That Goods of foreign Growth, and which by their Kind are to pay Duty, if they ſhall come or be brought in the Ports or Places of the Kingdom, neither by the King's natural born Subjects, nor by Aliens, they are not chargeable with the Duties mentioned in this Act.

2. If they are not brought into the Ports and Places of the Kingdom as Merchandize, *viz.* for Sale, they are not chargeable with the Duty; but Wines or other Goods coming or brought into the

* 12 *Car.* 2. C. 4.

Realm

Realm as Wreck, are neither brought into the Kingdom by any of the King's natural born Subjects, nor by any Strangers, but by the Wind and Sea; for ſuch Goods want a Proprietor, until the Law appoints one.

3. *Wrecked Goods* are not brought into the Kingdom, being caſt on Shore, as Merchandize, *viz.* for Sale; but are as all other, the native Goods of the Kingdom, indifferent in themſelves, for Sale, or other Uſe, at the Pleaſure of the Proprietor.

4. All Goods foreign or domeſtick are, in their Nature, capable to be Merchandize, that is, to be Sold; but it follows not thence, that whereſoever they are brought into the Kingdom, they are brought as Merchandize, and to be Sold, and ſhould pay Cuſtom; for they are transferred from Place to Place, more for other Uſes than for Sale.

5. All Goods charged with the Duty of the Act, muſt be the Property of a Merchant Natural born, or Merchant Alien, and the greater or leſs Duty is to be paid, as the Proprietor is an Alien or Native Merchant; but wrecked Goods are not the Goods of any Merchant *Natural born*, *Alien*, or *Denizen*, whereby the Duty payable ſhould be either demanded, diſtinguiſhed, or paid: Therefore a Duty impoſſible to be known can be no Duty; for *what cannot be known to be, is as that which is not.*

6. All Goods Subject to the Duty of Tunnage and Poundage, may be forfeited by the Diſobedience of the Merchant Proprietor, or thoſe truſted by him, as *unſhipping before Payment, or lawfully tendering or agreeing for*, &c. But wrecked Goods cannot be imported into any Creek or Place of the Realm by Way of Merchandize, and unſhipped to be laid on Land; for if ſo imported and unſhipped to be laid on Land, it is no Wreck, and therefore are not Goods forfeitable by the Miſbehaviour of any within the Act; and conſequently not Goods intended to be charged with the Duties by the Act.

a ſmall Duty of Cuſtom out of that which was all his own; and by *Weſtm.* 1. Where wrecked Goods belonged more to another than to the King, he ſhall have it in like Manner, that is, as the King hath his.

Now Goods that are chargeable with Cuſtom, according to the * Act of Tunnage and Poundage, muſt have theſe Properties.

1. They muſt be Goods which ſhall come or be brought into the Ports or Places of the Kingdom.

2. They muſt come or be brought into ſuch Ports or Places, as Merchandizes, that is, for Sale, and to that end; for there can be no other Conception of Goods brought as Merchandize.

3. They muſt come and be brought as Merchandize, and for Sale by the King's natural born Subjects, or by Strangers and Aliens, as diſtinguiſhed from the natural born Subjects.

4. The Duty payable to the King, is to be meaſured by the Quality of him that Imports the Commodity; that is, if the Importer be a natural Subject, he pays leſs to the King, and if an Alien more.

5. All thoſe Goods charged with the Duty by the Statute, ſo to come, or be brought into Ports or Places of the Kingdom, are to be foreign, as of the Growth of *France*, the *Levant*, *Spain*, *Portugal*, *Germany*, &c.

Whence it follows, 1. That Goods of foreign Growth, and which by their Kind are to pay Duty, if they ſhall come or be brought in the Ports or Places of the Kingdom, neither by the King's natural born Subjects, nor by Aliens, they are not chargeable with the Duties mentioned in this Act.

2. If they are not brought into the Ports and Places of the Kingdom as Merchandize, *viz.* for Sale, they are not chargeable with the Duty; but Wines or other Goods coming or brought into the

* 12 *Car.* 2. C. 4.

Realm

Realm as Wreck, are neither brought into the Kingdom by any of the King's natural born Subjects, nor by any Strangers, but by the Wind and Sea; for ſuch Goods want a Proprietor, until the Law appoints one.

3. *Wrecked Goods* are not brought into the Kingdom, being caſt on Shore, as Merchandize, *viz.* for Sale; but are as all other, the native Goods of the Kingdom, indifferent in themſelves, for Sale, or other Uſe, at the Pleaſure of the Proprietor.

4. All Goods foreign or domeſtick are, in their Nature, capable to be Merchandize, that is, to be Sold; but it follows not thence, that whereſoever they are brought into the Kingdom, they are brought as Merchandize, and to be Sold, and ſhould pay Cuſtom; for they are transferred from Place to Place, more for other Uſes than for Sale.

5. All Goods charged with the Duty of the Act, muſt be the Property of a Merchant Natural born, or Merchant Alien, and the greater or leſs Duty is to be paid, as the Proprietor is an Alien or Native Merchant; but wrecked Goods are not the Goods of any Merchant *Natural born*, *Alien*, or *Denizen*, whereby the Duty payable ſhould be either demanded, diſtinguiſhed, or paid: Therefore a Duty impoſſible to be known can be no Duty; for *what cannot be known to be, is as that which is not.*

6. All Goods Subject to the Duty of Tunnage and Poundage, may be forfeited by the Diſobedience of the Merchant Proprietor, or thoſe truſted by him, as *unſhipping before Payment, or lawfully tendering or agreeing for*, &c. But wrecked Goods cannot be imported into any Creek or Place of the Realm by Way of Merchandize, and unſhipped to be laid on Land; for if ſo imported and unſhipped to be laid on Land, it is no Wreck, and therefore are not Goods forfeitable by the Miſbehaviour of any within the Act; and conſequently not Goods intended to be charged with the Duties by the Act.

Goods loſt in paſſing a Ferry, a great River, or an Arm of the Sea, are not to be ſaid to be exported though they be carried to Sea; but Goods exported are ſuch as are conveyed to Sea in Ships, or other Naval Carriages of Man's Artifice, and by like Reaſon, Goods imported muſt not be Goods imported by the Wind, Water, or ſuch inanimate Means, but in Ships, Veſſels, and other Conveyances uſed by reaſonable Agents, as Merchants, Mariners, Sailors, *&c.* Whence it may be concluded, that Goods or Merchandize imported within the Meaning of the Act, can only be ſuch as are imported with Deliberation, and by Reaſonable Agents, not caſually and without Reaſon; and therefore wrecked Goods are not Goods imported within the Intention of the Act, and conſequently not to anſwer the King's Duties; for Goods, as Goods, cannot offend, forfeit, unlade, pay Duties, or the like, but Men whoſe Goods they are: And wrecked Goods have no Owners to do thoſe Offices, when the Act requires they ſhould be done; therefore the Act intended not to charge the Duty upon ſuch Goods. *Molloy*, B. 2. C. 5. §. 9. cites *Vaughan*, 159.

Per Holt, Ch. J. That Wreck ſhall not pay Cuſtom, has never been made a Doubt ſince the Caſe in *Vaughan*, 159, of *Shepherd* v. *Goſnold*, *L. Raym.* 388. The ſame Point (including *Flotſam*) reſolved by both Courts, *viz. C. B.* and then *B. R.* on Error brought, *Ibid.*

Goods may be retained for the Payment of Salvage. But if the Ship and Goods periſh in the Sea, and the Owners do totally forſake her, and ſo ſhe becomes a meer *Derelict*, in that Caſe the firſt Poſſeſſor that recovers her, or any Part of her lading, gains a *Property:* And this according to the Law of Nations, *as is that given for Loſt, where there is no Hopes of Recovery*, like a Lamb in the Paws of a Lion. And the incomparable *Ulpian* compares ſuch a *Dereliction* to a Man that knows his own Goods to be by another Man detained, and makes no Claim unto them in a long

long Time; unleſs ſome Cauſe do manifeſtly appear, ſeems to do it to no other Purpoſe, but to ſhew that he is willing to renounce them; and this is what *Ulpian* elſewhere intends, where he ſaith, that a Houſe poſſeſſed for a long Time by another, and no Claim made, nor Rent demanded for it, ſeems to be deſerted by the right Owner. *Molloy*, B. 2. C. 5. §. 3.

SECT. XVII.

French Ordinance of 1681, *concerning Inſurances.*

1. TO all our Subjects, and even to Foreigners, we allow to Inſure, and have Inſurance made, in our Dominions, on Ships, Goods, and other Effects that may be carried by Sea, or navigable Rivers. And to the Inſurers to ſtipulate and fix a Price, for the Conſideration whereof, they take on themſelves the Riſque.

2. The Contract, called *The Policy of Inſurance*, ſhall be drawn up in writing and may be executed as a private Deed.

3. The Policy ſhall contain the Name, and the Place of Reſidence of the Perſon who has the Inſurance made; whether he be the Proprietor of what he Inſures, or acts as a Factor; the Effects whereon the Inſurance ſhall be made; the Name of the Veſſel, and the Maſter; the Place where the Goods have been or ſhall be laden; the Port whence the Ship ſhall depart, or is departed, where ſhe ſhall load or unload, and thoſe ſhe may touch at; when the Riſque ſhall begin, when end; the Sum inſured; the Premium or Coſt of the Inſurance: A Declaration that the Inſurer or Inſured, agree to ſubmit to Arbitration, any Difference that may ariſe; and generally, all other Clauſes and Conditions which they may have agreed to inſert.

4. Never-

4. Nevertheleſs, Inſurance may be made without declaring the Name of the Maſter, or the Veſſel, or Cargo, which may come into *Europe*, from *Turkey*, the Coaſts of *Africa*, or other Parts of the World, provided that the Name of the Perſon to whom they may be conſigned, be declared in the Policy.

5. If the Policy do not fix the Time when the Riſk, ſhall begin, and when End, it ſhall be as ſet forth in the 13th Article of the Chapter relating to Bottomry Contracts*.

6. The Premium or Coſt of the Inſurance ſhall be paid in full, upon underwriting the Policy; but if Inſurance be made on Goods out, and home, and that the Ship being arrived at the out-ward-bound Port do not return, the Inſurer ſhall re-pay one-third of the Premium, except it be otherwiſe covenanted.

7. Inſurances may be made on the Hull, and Keel of a Ship, empty, or laden, before, or on the Voyage on Victualling, and on Goods jointly or ſeparately laden in a Ship of Defence, or not ſo; alone, or in Company with other Veſſels; out or home; for a whole Voyage, or a limited Time.

8. If Inſurance be made on the Hull and Keel of a Ship, her Tackle, Apparel, Filling, and Victualling, or on a Part thereof, the Valuation ſhall be made in the Policy. The Inſurer nevertheleſs, in Caſe of Fraud, may inſiſt upon a new Valuation.

9. All Seamen, Paſſengers, and others, may have Inſurance made on themſelves againſt Slavery: In this Caſe the Policies ſhall contain the Name, Country, Place of Abode, Age and Quality of the Perſon whereon Inſurance is made; the Name of the Ship, of the Port ſhe departs from, and whither ſhe is ul-

* The Article alluded to is as follows: If the Time the Riſk is to continue, be not ſtipulated by the Contract, with Regard to the Veſſel, Tackle, Apparel, and Victualling, it ſhall begin and run from the Day ſhe ſhall have ſailed, till ſhe be at Anchor at her intended Port, and there moored to the Quay. And as to the Goods, the Riſque runs from the Time of their being ſhipped, or in the Lighters to carry them on board, until they are landed.

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timately bound; the Sum which ſhall be paid in Caſe of Capture, as well for the Ranſom, as for the Charges of Return; to whom the Money ſhall be paid; the Penalty for Non-Payment.

10. We forbid making Inſurances on the Lives of any Perſons.

11. Thoſe however, who ſhall redeem Captives, may inſure on them the Price of their Ranſom, which the Inſurers ſhall Pay, if in their Way back they be retaken, killed, drowned, or if they die otherwiſe than by a natural Death.

12. Women may lawfully engage themſelves, and their Dowers, to get their Huſbands out of Slavery.

13. He who, on a Wife's Refuſal, and being juridically authorized, ſhall lend Money for the Ranſom of a Slave, ſhall have Preference of the Wife on the Huſband's Effects, except in Reſpect to her Dower.

14. Minors with the Advice of their Guardians may do the ſame to releaſe their Fathers from Slavery, and they ſhall not have any Pretenſions for Reſtitution.

15. The Owners of Ships, and the Maſters, ſhall not have Inſurance made on the Freight their Veſſels may make; nor ſhall the Merchants on an expected Profit on their Goods, nor Seafaring-men on their Hire.

16. We expreſsly forbid thoſe who may take up Money on Bottomry, to have Inſurance made thereon; under the Penalty of the ſame being declared invalid, and of corporal Puniſhment.

17. The Lenders on Bottomry, under the ſame Penalty, ſhall not inſure the Profit on the Sum lent.

18. The Inſured ſhall always run one-tenth Part Riſk of the Value of the Effects laden, except in the Policy it be expreſly declared, that the Whole is to be inſured.

19. If the Inſured be on board the Ship, or be the Owners of her, though they declare that they Inſure the Whole,

Whole, yet ſhall they be obliged to run one-tenth Part of the Riſque.

20. It ſhall be lawful for Inſurers to have Reinſurance made on the Effects by them inſured. And to the Inſured, to have Inſurance made on the Coſt or Premium of the Inſurance, and the Solvability of the Inſurers.

21. The Premiums of the Reinſurance, may be either more or leſs than thoſe of the Inſurance.

22. We forbid making any Inſurance or Reinſurance on Goods, or Effects, above their Value, in one or more Policies, under the Penalty of ſuch Inſurance being invalid, and Confiſcation of the Goods.

23. If nevertheleſs a Policy be made, without a fraudulent Intention, wherein the Valuation of the Effects exceed their real Worth, that Policy ſhall be valid to the Amount of their intrinſick Value; and in Caſe of Loſs, the Inſurers ſhall be anſwerable for the ſame, each in Proportion to the Sums by them underwrote; as alſo to return the Premium of the Surplus Value, retaining half *per Cent.*

24. Moreover, if there ſhould be ſeveral Policies made without a fraudulent Intention, and the firſt Policy amounts to the Value of the Effects laden, it ſhall alone hold good. The other Inſurers ſhall withdraw their Inſurance, and return the Premium, keeping half *per Cent.*

25. In Caſe the firſt Policy ſhould not contain the Amount of the Effects laden, the Inſurers on the Second, ſhall be anſwerable for the Surplus. If there be Effects laden to the Amount of all the Inſurance made, then, in Caſe of Loſs of a Part, it ſhall be paid by all the Inſurers, ſo much *per Cent.* on what they have under-wrote.

26. Inſurers ſhall be anſwerable for all Loſſes or Damages which ſhall happen at Sea by Tempeſt, Shipwreck, ſtranding, running foul of other Ships, changing the Courſe, or the Voyage, or the Ship;

Jettiſon, Fire, Capture, Plundering, Detention of Princes, Declaration of War, Repriſals, and generally all other Accidents of the Sea.

27. However, if the Change of the Courſe, the Voyage, or the Ship proceed from an Order of the Inſured, without the Conſent of the Inſurers, they ſhall not be anſwerable for the Riſks. Moreover this ſhall likewiſe hold good in Regard to all other Loſſes, or Damage, which may happen by the Act or Fault of the Inſured; nor ſhall the Inſurers be obliged to return the Premium, if they have begun to run any Riſk.

28. Nor ſhall the Inſurers be anſwerable for the Loſs or Damage that may happen to Ship or Goods, through the Fault of the Maſters, or Mariners, if by the Policy they be not liable to the Barratry of the Maſter.

29. The Loſs, Diminution, or Waſte, that may happen from the periſhable Quality of any Thing, ſhall not fall on the Inſurers.

30. Nor ſhall they be anſwerable for Pilotages, Warpings in, Cuſtom-Houſe Dues, Reports, Anchorages, or any other Dues, or Impoſitions, on Ship, or Goods.

31. In the Policy ſhall be ſpecified thoſe Goods that are ſubject to Leakage; without which the Inſurers ſhall not be anſwerable for the Damage that may happen to them by Storm; except the Inſurance be made upon Returns from foreign Countries.

32. If an Inſurance be made and particularized to be on ſeveral Ships, and the whole of what was to be loaded be put in one Ship, the Inſurer ſhall not be anſwerable for more than he may have underwrote on the particular Ship, though all the others ſhould happen to be loſt, and he ſhall return the Premium of the Over-plus, reſerving half *per Cent.*

33. When the Maſters of Veſſels have Orders to touch at different Ports, the Inſurers ſhall not be liable to Accidents that may happen to Goods on Shore, though

though they were deſtined for the Cargo of the Ship on which they underwrote, and ſhe was in Port to take them in, except there be a particular Agreement in the Policy.

34. If Inſurance be made for a fixed Time, without declaring the Voyage, the Inſurer, when that Term is elapſed, is free from his Obligation, and the Inſured may get a new Inſurance done.

35. But if the Voyage be declared in the Policy, the Inſurer ſhall run the whole Riſk of the Voyage, provided that there be an Augmentation of Premium, in Caſe the Voyage be longer than the Time limited. In Caſe the Voyage be leſs, the Inſurers ſhall not return any Premium.

36. Inſurers ſhall be exempted from the Riſk, yet ſhall get the Premium, if the Inſured, without their Conſent, ſend a Ship to a Port at a greater Diſtance than what is mentioned in the Policy, though it be in the ſame Courſe; but an Inſurance ſhall fully hold good, if the Voyage be only ſhortned.

37. If by the Inſured, the Voyage be broke before the Departure of the Ship, the Inſurance ſhall be made void, and the Inſurers return the Premium leſs one-half *per Cent.*

38. We declare void the Inſurance that may be made after the Loſs, or the Arrival, of Things inſured, provided the Inſured knew, or could know the Loſs, or the Inſurers the Arrival before the underwriting of the Policy.

39. It ſhall be preſumed, that the inſured knew of the Loſs, and the Inſurer of the Arrival, if the News thereof could have been brought from the Place of the Loſs, or of the Arrival, ſince it happened; reckoning at the Rate of a League and half in an Hour, excluſive of other Proofs that may be alledged.

40. If, however, the Inſurance be made on good or bad News, it ſhall ſubſiſt, except it ſhall be proved, excluſive of the allotted Time of a League

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and a Half in an Hour, as above; that the Insured knew the Loss, and the Insurer the Arrival of the Vessel, before the underwriting of the Policy.

41. The Insured, if it be proved against him, shall repay to the Insurer what he may have received, and double Premium. And if Proof be made against the Insurer, he shall repay the Premium, and twice that Sum to the Insured.

42. When the Insured shall receive Advice of the Loss of a Ship, or of Goods insured, of the Detention by Princes, and of any other Accidents for which the Insurers are answerable, he shall forthwith signify and make known the same to them, protesting that he shall make a Cession, or abandon to them at a proper Time.

43. The Insured may, instead of such Protestations, at once make his Cession or Abandon, and summons the Insurers to pay the Sum insured, as stipulated by the Policy.

44. If the Term for Payment be not fixed by the Policy, the Insurer shall be obliged to pay the Insurance, in three Months after Intimation of the Abandon.

45. In Case of Shipwreck or Stranding, the insured may endeavour, and work at the saving of the Goods, without prejudicing himself as to any Cession or Abandon which he may afterwards make; he shall also be repaid his Charges, the Account of which shall be credited on his Oath, to the Amount of the Value of what may be saved.

46. No Cession or Abandon shall be made, except in Case of Capture, Shipwreck, Stranding, Detention by Princes, or the intire Loss of the Goods insured; and all other Damages shall be reputed to be Average, which shall be settled between the Insurers and the Insured, according to their several Concerns.

47. No Cession or Abandon shall be made of a Part of any Concern or Interest, and the Remainder

kept; nor ſhall there be a Demand for Average, except it exceed one *per Cent.*

48. All Ceſſions, or Abandons, as well as all Demands in Virtue of the Policy, ſhall be made as follows:

In ſix Weeks for Loſſes happening on the Coaſts of the Country where the Inſurance was made.

In three Months, in other Provinces of our Kingdom.

In four Months, on the Coaſt of *Holland*, *Flanders* and *England*.

In a Year, in *Spain*, *Italy*, *Portugal*, *Barbary*, *Muſcovy*, *Norway*; and in two Years, for the Coaſts of *America*, the *Braſils*, *Guinea*, and other diſtant Countries. When theſe Terms ſhall be elapſed, the Inſured's Demands ſhall not afterwards be admitted.

49. On the Detention by Princes, the Ceſſion or Abandon ſhall not be made before ſix Months, if it happen in *Europe*, or in *Barbary*: If in a more diſtant Country, in a Year: both to commence from the Day of the notifying this Detention to the Inſurers. The Non-admittance of the Inſured's Demands in the preceding Article, ſhall only after theſe Terms elapſed, take Place.

50. Nevertheleſs, if Goods detained be of a periſhable Nature, the Ceſſion or Abandon may be made after ſix Weeks, if they be ſtopt in *Europe*, or in *Barbary*; and after three Months, if in a more diſtant Country, from the Day of the Notification of ſuch Detention to the Inſurers.

51. The Inſured ſhall be obliged, during the Terms mentioned in the two preceding Articles, to uſe their utmoſt Diligence for the clearing or taking off the Detention. And even the Inſurers themſelves may do the ſame if they think fit.

52. If a Ship be ſtopt by our Orders, in any of the Ports of our Kingdom, before the Voyage be begun, the Inſured ſhall not, on Account of this Detention, abandon or cede their Effects to the Inſurers.

53. The

53. The Insured shall be obliged, when he makes his Cession or Abandon, to declare all the Insurances he may have made, and what Money he may have taken on Bottomry, on the Effects he has insured; under the Penalty of invalidating his Insurances.

54. If the Insured shall secrete either Insurances, or Bottomry Contracts, and that those, together with what he may have declared, do exceed the Value of the Effects insured, the Insurances shall be void, and the Insured obliged to pay the Sum borrowed, though the Ship be taken or lost.

55. Moreover, if he sues for the Payment of the Sum insured, above the Value of his Effects or Interest, he shall be exemplarily punished.

56. Insurers on a Cargo, shall be obliged to pay the Sums by them underwritten, only to the Amount of what the Insured shall prove the shipping and the Loss of.

57. The Proofs of the Shipping, and Loss of the Effects insured, shall, immediately after the Notification of the Cession or Abandon, be communicated to the Insurers; who, before such Notification, shall not be liable to be sued for the Payment of the Sums insured.

58. Nevertheless, if the Insured receive no News of his Ship, he may, at the Expiration of a Year for common Voyages, reckoning from the Day of the Departure, and after two Years, for those at a greater Distance, make his Cession or Abandon to the Insurers, and demand Payment, without being obliged to produce any Certificate of the Loss.

59. Voyages from *France* to *Muscovy*, *Greenland*, *Canada*, *Newfoundland*, its Islands and Banks, and other Coasts and Islands of *America* to *Cape Verde*, and the Coast of *Guinea*, and all others which may be made beyond the Tropic, shall be reputed long Voyages, or at a great Distance.

60. After the Cession or Abandon is made, the Effects insured shall belong to the Insurer, who shall not, under the Pretence of waiting for the Return

of the Ship, put off the Payment of the Sums inſured.

61. The Inſurer ſhall be allowed to produce Proofs againſt any Documents the Inſured may give; nevertheleſs, he ſhall in the Mean Time pay the Sum by him underwrote, upon the Inſured's giving Security.

62. The Maſter who may have Inſurance made on Goods, loaden in his Veſſel, ſhall, in Caſe of Loſs, be obliged to prove the buying of them, and produce a Bill of loading ſigned by the Purſer or Mate.

63. All ſeafaring Men who bring Goods from Abroad to *France*, and there have Inſurance made, ſhall be obliged to leave a Bill of loading in the Hands of the Conſul or his Chancellor, if any where the Goods are loaden; if no Conſul, then in the Hands of a reputable *French* Merchant.

64. The Value of Goods ſhall be proved either by Book or Invoice; if not, they ſhall be eſtimated according to the Price which was Current at the Place when and where ſhipped, including all Cuſtoms and Charges till on board, except in the Policy a Valuation of them be made.

65. If the Inſurance be made upon Return from a Country where Trade is carried on by Barter, the Valuation of thoſe Returns ſhall be made on the Coſt of thoſe given in Barter, adding thereto all Charges.

66. In Caſe of Capture, the Inſured may Ranſom their Effects, without waiting for Orders from the Inſurers, if they could not adviſe them of it. They however ſhall be obliged to let them know afterwards in Writing, what Sum was paid for the Ranſom.

67. The Compoſition for the Ranſom, the Inſurers may take on themſelves in Proportion to their concern; in which Caſe, they ſhall be obliged to declare immediately, that they will contribute towards the Payment of the Ranſom, and will run the Riſk of the Return; if not, they ſhall pay the Sum by them

them insured, and have no Pretensions on the Effects ransomed.

68. We prohibit all Police Clerks, Secretaries of Insurance Chambers, Notaries, or Brokers, to have Policies underwrote, in which any Thing is left in Blank, under the Penalty of Costs or Damages; nor shall they be concerned in Insurances directly or indirectly themselves, or by other Persons, or take any Cession of the Rights and Interest of the Insured, under the Penalty of Five hundred Livres for the first Time, and in Case of Recidivation, to be deprived of their Employment: Which Penalties shall not be in any Manner moderated.

69. We enjoin under the above Penalty, that they keep a proper Register marked on every Leaf, by the Lieutenant of the Admiralty, wherein they shall keep an Account of the Policies they shall draw up.

70. If in the Policy there be a Declaration that any Dispute shall be left to Arbitration, and one of the Parties demand Arbitrators before any Litigation be begun, the other Party shall be obliged to agree to it; and refusing to name them, the Judge shall do it.

71. In eight Days after the Arbitrators are named, the Parties shall produce their Documents; and in eight Days after that, shall Sentence be given.

72. Such Awards by Arbitration shall be registered or ratified in the Court of the Admiralty where they were made. We prohibit the Judge thereof, under any Pretence whatsoever, to take Cognizance of the Merits of the Cause, under Pain of Nullity, and the Penalty of Damages and Costs.

73. Any Appeal from an Award by Arbitration after the Registring thereof, shall be to our Parliaments, where, until the Amount of the Sentence be paid, it shall not be received.

74. If Security be given to the Judges who register the Sentence of Arbitration, the same shall be executed, notwithstanding the Appeal.

SECT. XVIII.

Ordinance of Inſurance and Averages of the City of Amſterdam, of the Year 1744.

WHEREAS the worſhipful Gentlemen of the Judicature of the City of *Amſterdam*, have experienced, that ſince the Publication of the Statutes or Ordinances of Inſurance and Averages, and the Amplifications thereof, many Alterations have from time to time happened in Trade; whence ſundry Matters and Articles require to be altered, explained or amended: Therefore the ſaid Gentlemen, after Advice taken concerning Trade, Inſurances, and Averages, and on the Information of many eminent Merchants and Underwriters, have thought proper, by Virtue of the Privileges of this City, and of the Letters of Grant, Approbation and Confirmation granted, *ex abundanti*, by their High Mightineſſes to the ſaid City, on the 17th of *July* 1612, to confirm, enlarge, and explain the aforeſaid Ordinances, and the Amplifications thereof; and farther to Ordain, enact, and inſtitute, as by theſe preſents is ordained, enacted, and inſtituted, that in Matter of Inſurances and Averages henceforth ſhall be obſerved and regarded what here follows.

1. Firſt it is ordered, that all Stipulations or Conditions inſerted in any Policies of Aſſurance which are contrary to this Ordinance, ſhall be deemed void, and of no Value, notwithſtanding the contracting Parties ſhould renounce all Benefit from this Ordinance.

2. The Inſtrument of Aſſurance Policy, is to contain the Name of the Ship, that is to ſail or depart from theſe Countries, to other Countries or Kingdoms, or that is expected to come from any foreign Parts, to theſe, or other Countries and Kingdoms; and likewiſe the Name of the Captain or Maſter,

that

that ſhall have the Command of the Ship, unleſs the ſame be not known: In which Caſe it muſt be mentioned in the Policies; and the Name of the Perſon that gave the Order or Advice muſt be expreſſed, together with the Date of the Letter of Advice, in which the Order is given, under the Penalty of being of no Value: and no Return of Premium is to be demanded of ſuch an Aſſurance, unleſs the Names of the Shipper, or whomſoever elſe has the Direction, as likewiſe the Name of the Parties to whom the Goods go conſigned, are expreſſed in the Policy: And in that ſame Inſtrument are likewiſe to be mentioned the Name of the Place where the ſaid Ship or Ships are to be loaded, and where they are bound to; likewiſe under the Penalty, that ſuch an Obligation of Aſſurance ſhall be void and of no Effect, if the Fault proceeds from the Party that is inſured; but otherwiſe the Aſſured is to ſeek his Redreſs from the Perſon that drew up the Inſtrument, for ſo far as the Defect or Fault lies with him: provided however, that with Reſpect to the Place of Shipping, it ſhall only be neceſſary to expreſs the ſame in Caſes when the Goods are ſhipped from a different Place, then from where the Riſk of the Aſſurance is to take its beginning. Further, in making Aſſurances upon the Hull of Ships, as likewiſe upon Bottomry Money, either upon Ships or Goods, it ſhall not be requiſite to mention the Places of loading.

3. It ſhall alſo be lawful to make Inſurance on Goods and on Ships already departed from the Place of their lading, provided the Time of their Departure be inſerted in the Policy, without adding thereto, "but departing ſooner or later ſhall not prejudice;" which is hereby ſpecially forbidden: In Caſe the Inſured has no farther Knowledge of the Departure by a Letter of Advice, he ſhall be deemed Ignorant thereof; but ſhall expreſs in the Policy, the Place and Date of the Letter of Order, on Pain of Nullity; and ſhall moreover be obliged to confirm this his Ignorance upon Oath, in Caſe of Diſaſters or Loſſes;

ſaving to the Underwriters, the Liberty of proving the Knowledge of the Inſured: And evident Proof thereof appearing, the Inſured ſhall not only have no Action againſt the Underwriters, but ſhall alſo be obliged to pay them a double Premium, over and above the Charges paid by them to come at the ſaid Proofs; and it ſhall be lawful for the High Sheriff to proceed againſt ſuch Inſureds, as againſt treacherous Perſons.

4. By Parts circumjacent to the Place from whence the Inſurance ſhall begin, is underſtood not only the Place of Lading, but alſo all the Creeks and Harbours, the Buoys, Beacons, and all ſuch like Marks, in Caſe there be any, which the Ship muſt paſs.

5. The Riſk of the Underwriters of Goods, ſhall commence from the Time the Goods inſured are brought on the Key, or to the Sea Shore, from thence to be conveyed, in Boats, Barks, or Lighters, on board of the Ships that are to tranſport them: and ſhall continue till the Ships be arrived at the deſtined Place, and the Merchandizes inſured be unladen on the Key, or Shore. But in Caſe the Inſured neglect to unlade the Goods, or think proper to make Uſe of the Ship inſtead of a Warehouſe, then the Riſk of the Underwriters ſhall end fifteen Days after the Arrival of the Ship, excepting, that by lawful Hindrances or Obſtacles, they could not have been unloaded in that Space; which, in Caſe of Diſaſters or Damages, ſhall be proved.

And in regard to the Hull or Body of the Ship, the Riſk of the Underwriters ſhall commence when the Maſter has made a Beginning of Lading of Merchandizes, or has taken in Ballaſt for the inſured Voyage, and end one and twenty Days after the Ship ſhall be arrived at the deſtined Place, or ſo much ſooner, as ſhe ſhall be intirely unladed. But Inſurance being made on the Hull for going and coming, that is, for the Voyage out and home, the Riſk for the Underwriters, ſhall not ceaſe till the whole inſured Voyage be ended.

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6. The Insured on the Cargo, may not cause the Master whom he has freighted, to enter, or to make any other Port, nor to alter his Voyage, but according to the Policy: Otherwise the Insurance shall be null, although it had been inserted in the Policy, that he might touch at, and make all Places, any where; but the Master may touch at other Ports than those mentioned in the Policy, when Necessity requires it. And doing otherwise, if it be without Order of the Insured, the Insurance shall nevertheless remain valid; saving to the Underwriters the Right of having Recourse on the Master. But if the Insurance be made for the Owners or Proprietors of the Ship, it shall in such a Case be null.

7. The Hull of the Ship, with her Masts, Yards, Bowsprit, standing and running Rigging, Anchors, Cables, Sails, Guns, Ammunition of War, Provisions, and further Appurtenances thereof, nothing excepted, even the Premium of Insurance, and the Monies given in Hand inclusive, may be insured to the full, and as it really cost, as fitted out for Sea; and the Owners or insured, shall have the Liberty to Value the Ship with all her Appurtenances in the Policy, for the Whole, or each for his Share, but not above the true Value; and if no Valuation is inserted in the Policy, or if the Parties in Case of Loss or Average, disagree about the Value, as also if it was valued above its true Value, then the Commissioners shall make Inquiry, and fix the Valuation, and the Underwriters may bring in their Plea.

8. But he who causes himself to be insured on the Hull or Body of a Ship built of Fir Wood, shall particularly insert it in the Policy, mentioning that she is built of Fir Wood, on pain, that otherwise the Underwriters shall not be obliged to pay more than the Half of the Loss that might happen. Every Thing farther that concerns the Insurance upon the Hull is decreed in the foregoing Article.

9. Insurance on Goods, Wares, and Merchandizes, Monies, Gold, Silver, Jewels, Pearls, and other precious

precious Stones, going or coming by Land, or over freſh Water, (whereof hereafter, under N°. 5. a Form of Policy is found) may be regulated by the Parties in Manner as they amongſt them can agree, provided it be not contrary to this Ordinance. Maſters may alſo cauſe their Veſſels to be inſured.

10. But under the general Denomination of Goods, Wares and Merchandizes, ſhall not be underſtood to be comprehended, Gold, Silver, coined or not coined, Jewels, Pearls, or precious Stones, nor Ammunition of War, and Arms; and therefore, he who cauſes himſelf to be inſured thereon, ſhall be obliged to name and expreſs thoſe Wares in the Policy; as alſo if they are packed amongſt other Goods, to mention it, or otherwiſe the Inſurance ſhall be held to be of no Validity.

11. It ſhall alſo be lawful to make Inſurance on Ships, Goods, Wares, and Merchandizes, which are ſunk, ſpoiled, robbed, taken, or arreſted, even after ſuch Misfortune has happened, if no Knowledge thereof is come to the Principal who cauſes the ſame to be inſured, at the Time of giving of the laſt Order, or to him who gives Order for making the Inſurance, or to the Correſpondent, Broker or others who have procured the ſaid Inſurance, at the Time of making it.

12. But when the Ship or Goods have been ſo long ſunk, robbed, ſpoiled, taken or arreſted, that the Knowledge thereof could have come to the Perſon who maketh the Inſurance, either by Sea or by Land, reckoning three Miles to two Hours, in ſuch Caſe the Inſurance ſhall be held of no Value, except the Inſured, and alſo thoſe who procured the Inſurance for him, declare upon Oath that they were ignorant of the Damage and Loſs at the making the Inſurance.

13. The Maſters, Pilots, Sailors, warlike People, and all others who navigate the ſaid Ships, ſhall not cauſe their Hire or Wages to be inſured, but their Ranſom from Pirates, and the Merchandizes they take along

along with them, they may insure. No Insurance shall be made on Wagers of Voyages, and other such like Inventions; and no Judgment shall be given on them. Neither shall Insurance be made on the Ship's Hull, or Goods, before the Ship shall lie at the Place from whence one causes himself to be insured, without specially expressing it in the Policy, that the Ship was not yet there arrived on pain of Nullity.

14. In Insurances on the Bodies of Masters, Mariners, and Passengers, against Infidels, and other Pirates, the Underwriters shall be obliged to pay the Sum they have underwritten, as soon as the Bills of Exchange drawn for the Payment of the Ransom are accepted, or sooner, if it appears that the Person ransomed is arrived on Christian Ground: But with this Proviso, that the full Sum insured for the Ransom be laid out, and, in case the Person was ransomed for less, that the Overplus be returned.

15. The Freight Money, (besides the ordinary Charges of Averages so called) after Deduction of the Wages of the Crew, and further Charges, which on navigating safe must be paid thereout, may be insured for as much as can be justly made appear either by Charterparty, Manifest or Bills of Lading, that there will be got or lost: And if a Ship has laden Goods for the proper Account of Owners, and they will insure the Freight, the Freight shall be valued in the Policy; and in Default of that as by Art. VII. and XXII.

16. He who causes himself be insured on Ship, and Lading, with Intention, if taken by the Enemy, to cause the same to be ransomed or redeemed, shall be obliged to express it distinctly in the Policy, mentioning at what Sum or Order is given to the Master, or him who hath the Direction thereof, for the redeeming; in which Case the Underwriters must continue to run the Risque on such ransomed Ships and Goods, till they arrive at the destined Place of unlading; and moreover be obliged to make good the Sum, with the Charges which are paid for the Person

ſon who is gone over as Hoſtage for the Ranſom, in the Manner of a groſs Average on Ship and Cargo; this ſerving as a Foundation or Rule, that when the Ship is taken and ranſomed before ſhe has accompliſhed half her Voyage, the Goods ſhall be reckoned according to the real Coſt; all Charges, till on board, and the Premium of Inſurance included: And being advanced beyond half the Voyage, then at what they would ſell for. And the Ship ſhall at all Times, be ſhe ranſomed before ſhe has made half the Voyage, or after, be reckoned according to the Valuation made in the Policy.

17. The imaginary Profit one promiſes himſelf on his Intereſt in a Cargo, muſt be valued in the Policy, with Explication which Goods it is expected from: But no Returns of Premium for the ſame ſhall be demanded.

18. Inſurance againſt Fire, on Ropeyards, Sugar-Houſes, Still-Houſes, Mills, and other Edifices, Effects and Utenſils, thereto belonging, as well in this Country as abroad, as alſo on Houſes and Ware-Houſes, ſhall be permitted to be made by Policy for one Year.

19. Alſo Inſurance ſhall be permitted to be made on Monies given by the Inſured to a Mariner, Maſter or other Perſon navigating on any Voyage, on Bottomry, or Adventure of a Voyage, with the Premium included: Provided the Sum of Money which is paid on Bottomry be inſerted in the Policy, as alſo the Premium; otherwiſe the Capital only ſhall be underſtood to be inſured.

The Inſured ſhall in caſe of Loſs, either by the Ship's being caſt away, taken, or detained by Friends, or Enemies, and her being miſſing a Year and Day, not be obliged to produce any other Proof but only of the Misfortune befallen the Ship, and concerning his Intereſt, only his Bottomry Bond; provided the Inſured, on being paid, make over to the Underwriter all Claim on the Taker on Bottomry, and deliver up to him the Writings thereto belonging.

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The Insured shall be obliged to insert in the Policy the Name of him to whom the Money on Bottomry is given, also the Name of the Ship with which the Taker on Bottomry shall navigate, the Name of the Master, as also whither the Ship is bound, on pain of Nullity.

If during the Voyage the same is altered by the Master not by Means of the Taker of the Money on Bottomry, the Underwriter shall notwithstanding, in case of Loss, be obliged to pay his Engagements.

But the Money on Bottomry being given to the Master, and the Voyage being altered by Order of his Owners, the Insured shall be obliged, as soon as he receives Knowledge thereof, to give Notice to the Underwriters, and agree with them concerning the altering of the Premium, or leave the said Altering to the Arbitration of the Commissioners: otherwise the Underwriters, in Case of Loss, are not obliged to make it good, the Insured retaining his Action only against the Master, as Receiver of the Money.

20. A Master being on his Voyage, and receiving Damage on the Hull, or otherwise, and being obliged, for the repairing and restoring of his Ship, in order to proceed on his Voyage, to negociate Money on Bottomry on his Ship, the Giver of the Money shall be permitted to cause the Amount of the said Bottomry, with the Premium, to be insured; although it should happen to appear, that the Owners, or some of them, had caused the Ship, or his Share on the same, to be insured before or after.

21. Insurances made on Goods, which at the Place of their lading, or any where else, are charged to the full with Bottomry, are declared null and of no Value, with forfeiture of the Premium for the Underwriter, and with the Penalty of arbitrary Correction. But the Taker on Bottomry, in case he ships more Goods than the Capital taken on Bottomry doth amount to, may cause that Overplus also for the gross Average, to be insured. The Giver of the Money, or the Holder of the Bottomry Bond may also insure

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his Intereſt to the full, with the Premium thereof, provided that in all the Bills of Lading, or Manifeſts of the Lading, the taking and receiving the Bottomry Money on the ſaid Goods be particularly inſerted; with mention of the Date, the Place from whence, the Perſon to whom paid, and for whoſe Account. This is only to be underſtood of Money given in this Country, and from the American Colonies, &c. to this Country; but the Inſurance being made from other Places, the Tenor of the Bottomry Bonds muſt be obſerved.

But in caſe the Order for the Inſurance was previouſly given by the Lender, or it was already executed, the Taker of the Money ſhall be obliged to transfer by Aſſignment, the Right to the ſaid Policy or Inſurance to the Holder of the Bottomry; and in Default thereof the Inſured ſhall not only be deprived of his Demand on Account of the ſaid Policy, but his Premium paid be kept by the Underwriters.

Inſurance made on Bottomry on Goods is free of all groſs Average, and Diminution of Value by their own Waſte.

22. All Goods, Wares, and Merchandizes, none excepted, as alſo Gold, Silver, Jewels, Pearls, and precious Stones may be inſured to the full, with all Charges till on board, the Premium of Inſurance included; and no Valuation in the Policy ſhall take Place of Goods and Effects, whereof the real Coſt or Value can be produced; but Goods of our own Produce, and Fabrick, or thoſe obtained or accepted of by Barter, and otherways, under or above the current Price, and whereof no proper Invoice, with Juſtification of Intereſt, can be produced, may be valued in the Policy with all Charges till on board, and the Premium of Inſurance included: On Neglect thereof the Valuation ſhall be left to the Enquiry and Deciſion of the Commiſſioners; and the Inſurers may bring in their Plea.

23. If a Perſon has made Inſurance on Goods which he doth not ſend or lade, or on Goods which

are not ſent to him, alſo if leſs in Value is ſhipped than he has inſured, he may demand back the Premium of Inſurance of what is over-inſured, leaving one half *per Cent.* to the Inſurer: But if the Goods are already laden from the Key or Shore, in Barks, Wherries, or Lighters, to be conveyed to the Ships which were to tranſport them, and do return back, the Abatement ſhall then be one *per Cent.*

Returns of Premium for Inſurance on the Hull of the Ship ſhall alſo take Place if a Stop is put to the Voyage inſured: But one *per Cent.* ſhall be paid to the Inſurers for their Trouble, and the Riſk they have run. On the contrary, if, in Caſe of Loſs, or Average, by Exhibition of Proofs it be found that the Sum inſured doth amount to more than the Value of the Goods, the Inſurers ſhall not be obliged to make good farther, or more, than the juſt Value of the Goods ſhipped: and being Goods, whereof no proper Invoice and Proof of Intereſt can be ſhown, and which therefore, according to Art. VII. and XXII. muſt be valued in the Policy, the Value they are ſet at, ſhall be obſerved; and what is more inſured returned.

24. In Returns, as alſo in Averages and Loſſes, the Inſurers who have underwrote upon one and the ſame Policy, although it be with Difference of Dates, ſhall ſhare equally.

But if more than one Policy is uſed and underwrote upon for one and the ſame Parcel of Goods and Intereſt, then the firſt Policy in Date, without regarding the following Policy, ſhall take Place for the Amount of the Sum inſured for the Value of the Goods and Effects; and the Reduction ſhall fall on the Policy of later Date, as well in Caſe of Returns, as of Average and Loſſes.

25. If an Inſurer fails, it ſhall be lawful for the Inſured to inſure anew again ſuch Article of Inſurance with another, on all good and bad Tidings; and he may give Notice, by the Meſſenger of the Chamber of Inſurance, at the Habitation of the failed Inſurer,

or

or to the Aſſignee, and diſcontinue the Riſk of the Parcel underwrote by him.

26. If any Kings, Princes, Potentates, or Lords, ſhould arreſt, detain or take in their Countries, any Ship inſured, and it be uncertain, whether the ſame will be recovered again, or not, and alſo if ſhe ſhould become incapable to perform her deſtined Voyage; then the Owners and Freighters, who have cauſed themſelves to be inſured, ſhall be obliged to retain for ſix Months the Property of the arreſted Ships, and precious Wares, be they alſo incumbered or not, before they may abandon their ſaid Effects; commencing the ſaid ſix Months from the Time that they ſhall have given Notice to the major part of the Inſurers, who are on the Spot, by the Meſſenger of the Chamber of Inſurance, who ſhall give that Notice: Which ſix Months ſhall be the Time allowed, if the Caſe ſhall have happened in *Europe*, and the Bounds limited by the Tenor of the XXIXth Article. But if it ſhould happen without thoſe Limits, the Inſured ſhall not abandon ſooner than till the Expiration of twelve Months, commencing with the Day of the Intimation; nevertheleſs the Inſured ſhall not be hindered from taking ſome Security in the mean while of the Inſurers, by Sureties, Pledges, or otherwiſe, according as the Commiſſioners ſhall think proper: But the Inſured notwithſtanding remain obliged, either by themſelves or by their Correſpondent, to take Care of the Goods, and to promote as much as poſſible their Diſcharge. They ſhall alſo be at Liberty, within the ſaid Limitation of Time, to reſhip the ſame on board another Ship, or Ships; and the Charges of fitting out, and of higher Freight, alſo Damage and Waſte of the Merchandizes, occaſioned by the Arreſts, ſhall be for Account of the Inſurers, in Proportion to what they have underwrote.

27. But in Relation to coarſe and periſhable Wares, and Merchandizes, the Inſured ſhall not be obliged to wait the aforeſaid Time of ſix Months within, and the twelve Months without, the Limits,

before

before they abandon; but may proceed with their Concerns, according to Circumſtances, and the Condition of their Goods: Only they muſt before-hand give Notice thereof, as above to the major Part of the Inſurers.

28. When a Ship inſured is become unnavigable, or the inſured Ships, or other Goods are ſtolen, taken by Enemies, or otherwiſe ſpoiled, or loſt, or there are no Hopes of recovering the ſame, the Inſured may abandon all ſuch Ships and Goods for the Benefit of the Inſurers: and the ſame being duly done, the Inſurers ſhall have three Months after the Intimation of the ſame to furniſh the Payment of the Sum by them inſured.

29. In caſe any Inſured Ship or Goods, ſtays out a Year and a Day after it is inſured, and is departed from the Port where ſhe was laden, without any Thing having been heard of her in the mean While at the Place of lading, or deſtined Place of unlading, if it be in *Europe*, *Barbary*, the *Canary Iſlands*, any Part of the *Mediterranean*, the *Levant*, and *Archipelago*, or thereabouts, then the ſaid Ship and Goods ſhall be held to be loſt, and Intimation thereof may be made to the Inſurers, and Payment demanded three Months afterwards: And in Regard to the Place at a further Diſtance, henceforth ſhall be obſerved at the Space of two Years.

30. All Actions for Loſſes, or groſs Averages on Ships and Goods, ſhall be brought, at the furtheſt, within the Space of half a Year, after the Diſaſters and Damages have happened, if within the Limits of *Europe*, as above by Art. XXIX. is limited; but happening beyond theſe Limits, the Actions ſhall be brought within the Space of three Years, and by Law be proſecuted, and purſued, on Pain of being nonſuited.

31. The Actions of Loſſes, and groſs Averages, which may happen on the Goods mentioned in Art. IX. or ſuch like, going or coming by Land, or over freſh Water, ſhall be intimated to the Inſurers, and

or to the Aſſignee, and diſcontinue the Riſk of the Parcel underwrote by him.

26. If any Kings, Princes, Potentates, or Lords, ſhould arreſt, detain or take in their Countries, any Ship inſured, and it be uncertain, whether the ſame will be recovered again, or not, and alſo if ſhe ſhould become incapable to perform her deſtined Voyage; then the Owners and Freighters, who have cauſed themſelves to be inſured, ſhall be obliged to retain for ſix Months the Property of the arreſted Ships, and precious Wares, be they alſo incumbered or not, before they may abandon their ſaid Effects; commencing the ſaid ſix Months from the Time that they ſhall have given Notice to the major part of the Inſurers, who are on the Spot, by the Meſſenger of the Chamber of Inſurance, who ſhall give that Notice: Which ſix Months ſhall be the Time allowed, if the Caſe ſhall have happened in *Europe*, and the Bounds limited by the Tenor of the XXIXth Article. But if it ſhould happen without thoſe Limits, the Inſured ſhall not abandon ſooner than till the Expiration of twelve Months, commencing with the Day of the Intimation; nevertheleſs the Inſured ſhall not be hindered from taking ſome Security in the mean while of the Inſurers, by Sureties, Pledges, or otherwiſe, according as the Commiſſioners ſhall think proper: But the Inſured notwithſtanding remain obliged, either by themſelves or by their Correſpondent, to take Care of the Goods, and to promote as much as poſſible their Diſcharge. They ſhall alſo be at Liberty, within the ſaid Limitation of Time, to reſhip the ſame on board another Ship, or Ships; and the Charges of fitting out, and of higher Freight, alſo Damage and Waſte of the Merchandizes, occaſioned by the Arreſts, ſhall be for Account of the Inſurers, in Proportion to what they have underwrote.

27. But in Relation to coarſe and periſhable Wares, and Merchandizes, the Inſured ſhall not be obliged to wait the aforeſaid Time of ſix Months within, and the twelve Months without, the Limits, before

before they abandon; but may proceed with their Concerns, according to Circumſtances, and the Condition of their Goods: Only they muſt before-hand give Notice thereof, as above to the major Part of the Inſurers.

28. When a Ship inſured is become unnavigable, or the inſured Ships, or other Goods are ſtolen, taken by Enemies, or otherwiſe ſpoiled, or loſt, or there are no Hopes of recovering the ſame, the Inſured may abandon all ſuch Ships and Goods for the Benefit of the Inſurers: and the ſame being duly done, the Inſurers ſhall have three Months after the Intimation of the ſame to furniſh the Payment of the Sum by them inſured.

29. In caſe any Inſured Ship or Goods, ſtays out a Year and a Day after it is inſured, and is departed from the Port where ſhe was laden, without any Thing having been heard of her in the mean While at the Place of lading, or deſtined Place of unlading, if it be in *Europe*, *Barbary*, the *Canary Iſlands*, any Part of the *Mediterranean*, the *Levant*, and *Archipelago*, or thereabouts, then the ſaid Ship and Goods ſhall be held to be loſt, and Intimation thereof may be made to the Inſurers, and Payment demanded three Months afterwards: And in Regard to the Place at a further Diſtance, henceforth ſhall be obſerved at the Space of two Years.

30. All Actions for Loſſes, or groſs Averages on Ships and Goods, ſhall be brought, at the furtheſt, within the Space of half a Year, after the Diſaſters and Damages have happened, if within the Limits of *Europe*, as above by Art. XXIX. is limited; but happening beyond theſe Limits, the Actions ſhall be brought within the Space of three Years, and by Law be proſecuted, and purſued, on Pain of being nonſuited.

31. The Actions of Loſſes, and groſs Averages, which may happen on the Goods mentioned in Art. IX. or ſuch like, going or coming by Land, or over freſh Water, ſhall be intimated to the Inſurers, and

be purſued on Pain of being nonſuited, within half the Space of Time enacted by Art. XXX.

32. In caſe the inſured Ship or Goods ſpoil of themſelves without any outward Misfortune, the Inſurer is not anſwerable for the ſame.

33. Whereas when People are inſured on the Hull or Body of a Ship to the *Weſt Indies*, *Guinea*, *Cape Verde* the *Streights*, or any other more diſtant Places, out and home, it often happens that notwithſtanding ſhe had done with her Trade, wholly or partly, and the Returns or Produce were ſent over with another Ship, or Ships, to the great Advantage of the Inſured, the Inſured nevertheleſs continue trading on; ſo that often in Length of Time, the ſaid Ship becomes unnavigable, or otherwiſe in Danger; and alſo that Ships being freighted by the Month, have often carried their Freights outwards and have notably profited; but afterwards by being unnavigable, or by Storms happening to be loſt on this Coaſt, or even in Harbour, the Inſurers are caſt to pay the ſaid Ship what it was worth when it ſailed from this Country, although the ſaid Ship if ſhe had made a ſafe Voyage, was worth, or would have yielded by Sale, not above one third or one half of what the Inſurers pay; in ſuch Caſes the Commiſſioners are authorized to act and to diſpoſe as they according to Diſcretion ſhall think proper.

34. If any Inſurance be made under the general Denomination of Goods and Merchandizes, or whatever the Intereſt of the Inſured might conſiſt in, nothing excepted; and it be found that the Riſk is run on Wool, Flax, Hemp, Stockfiſh, Herrings, Corn, round or flat Seed, Sugars, Peaſe, Beans, Cheeſe, Books, and Papers, the Inſurers ſhall be free of Damages under 10 *per Cent.* and it is ſpecially forbidden to contract in the Policy with a contrary Clauſe.

But if Inſurance be made by Policy on any of thoſe Wares and Merchandizes, expreſſing, in the ſame, that the Riſk ſhall be run thereon, then the Inſurer ſhall only be free of Damage under 3 *per Cent.*

35. The

35. The Average or Damage on Goods that happened during the Voyage by outward Misfortune, ſhall be repartitioned on the groſs Capital, that the Goods being ſound, would have amounted to at the Place of their Deſtination: On the other Hand, it ſhall be lawful for the Inladers, Owners, or thoſe to whom they are conſigned, to make Inſurance on the Freight which they muſt pay for Goods in caſe of a ſafe Voyage; though on Condition that the Underwriters who have inſured thereon ſhall be obliged only to pay the Eſtimate of the Average fallen on the Goods, and no more: And in caſe of a total Loſs, Returns can be demanded from him who has inſured on the Freights.

36. The Inſureds ſhall alſo be obliged to give Notice to the Inſurers of all the Intelligence they receive of Misfortunes, Arreſts, or Damages, befallen the Ships or Goods inſured, of which Notice authentick Copies, taken from the original Letters by the Secretary and Meſſenger of the Chamber of Inſurance, ſhall be communicated to the Inſurers, at their Coſt, if they deſire it: On the contrary, the Inſured ſhall be entitled to demand of the Inſurers in Proportion to what they have underwrote, ſuch Sums of Money on Account, for removing or retrieving of the Misfortunes, Damages, or Arreſts, as it ſhall appear from the Circumſtances of Matters will be neceſſary.

And it being found that the Inſureds were wanting or negligent in cauſing the ſaid Notice to be given to the Inſurers, they ſhall be obliged to refund them all the Charges and Damages with Intereſt, occaſioned by this their Neglect: And all this at the Arbitration of the Commiſſioners, as they, according to the Circumſtances of Matters, ſhall think proper.

37. All Premiums of Inſurance, either outwards or out and home jointly, whatever *per* hundred the ſame may amount to, ſhall be paid down at the underwriting of the Policy.

The Premium of Inſurances that are made by the Month ſhall likewiſe be paid down for ſo many Months as ſhall be ſtipulated in the Policy; and for the further Months to the End of the Voyage, and the Arrival of the Ships at the deſtined Place, on ſuch Conditions as ſhall be agreed on.

But if the Inſurer give Credit for the Premium to the Broker or others, he has his Recourſe only on them; but if the Broker or others become incapable, and the Inſured have not paid the Premium to them, the Inſured ſhall be obliged to pay the ſame to the Inſurer.

38. And to prevent any Fraud, all Brokers and others who procure or ſolicit any Inſurance, ſhall be obliged to make uſe of and employ no other Policies but ſuch as are privileged and ſigned by the Secretary: And they ſhall keep Copies of all that is written in them by Hand, on Pain of loſing their earned Salary, and four Times as much, to and for the Benefit of the Poor; and ſuch Penalty over and above as the Gentlemen of the Judicature ſhall think proper, according to the Circumſtances of the Caſe.

39. The Brokers and others who procure any Inſurance ſhall, for the Conſideration of their Brokerage, be obliged to exhibit in the Chamber of Inſurance, at all Times when required, the Copies kept by them, according to the foregoing Article, that authentick Copies thereof may be delivered for the Uſe of the concerned, on Pain to anſwer the Default, if, by their Neglect of duly keeping the Copies, any Prejudice happen to be ſuffered.

The Brokerage or Commiſſion of Inſurance, which according to the Practice for many Years paſt, is paid only by the Inſurers, ſhall be one quarter *per Cent.* for each Voyage; for which Conſideration the Brokers ſhall be obliged to anſwer for the Premium.

The Brokers or others ſhall alſo be admitted to ſummon their Principals before the Commiſſioners of Inſurance concerning the Premiums diſburſed, if Payment

Payment be refuſed; and ſhall not be obliged to deliver the Policy before, but to keep the ſame by them as a Security.

The Brokers, or others, who procure any Inſurance, ſhall not be allowed to be Inſurers themſelves.

40. It is further enacted, that what is contained in this Ordinance ſhall be underſtood of all Inſurances which in this City ſhall be contracted and concluded, whether the Inſured as well as the Inſurers dwell in or without the City; whether the Intereſt or Riſk run for Account of Inhabitants or Strangers, Friends or Foes; all which in this Regard ſhall be conſidered as having choſen their Reſidence within the City: Wherefore alſo all Loſſes and Averages ſhall be determined by the Commiſſioners, according to the Contents of this Ordinance, except the groſs Average has been judicially regulated beyond Sea at the Ship's deſtined Place.

41. And if ſomething ſhould be inſerted or agreed upon in the Policy, that is not limited in the Ordinance, ſuch Conditions or Stipulations ſhall be left to the Deciſion of the Commiſſioners.

42. And whereas the Caſes from which groſs Averages reſult, are ſo variable in Circumſtances, that they cannot well be ſtipulated or provided for by any Ordinance; thoſe Matters are left to the Commiſſioners, to be by them decided and regulated according to Law, Reaſon, and Equity.

43. All Differences ariſing between Parties on Account of Inſurances made in this City ſhall preſently be examined, and by the Commiſſioners of Inſurance here be determined according to this Ordinance: They alſo ſhall decide all Differences proceeding from Averages, as by the foregoing Article.

44. And the Commiſſioners may likewiſe decide according to the ſaid Ordinance, all Differences ariſing from Inſurances made out of this City, which ſhall be relative to the Chamber of Inſurance, or to this Exchange.

45. And the Commiſſioners, jointly with the Secretary ſhall have, of all the Differences brought before them concerning Loſſes, one third Part of a Gilder of each one hundred Gilders, for their Labour and Trouble; which Money ſhall be diſburſed or paid by the Plaintiff.

46. They ſhall likewiſe have one *per* thouſand of the Capital for the ſettling of the groſs Average, which the groſs Average ſhall pay: As alſo of Differences concerning Premiums demanded one *per* thouſand of the Sum inſured.

47. The Loſs or Damage of the Ship or Goods, having been made to appear to the Commiſſioners by Exhibition of Policies, Bills of Lading, Manifeſts, proper Certificates, or other juſt Proofs, and the underwriting of the Policies being alſo proved, and that Intimation was made to the Parties three Months before of the Loſs; the ſaid Commiſſioners may order the Money demanded, either the Whole, or Part, to be proviſionally depoſited, with Permiſſion to the Inſured to receive the Money depoſited, on giving ſufficient ſecurity to return the ſame, with Intereſt at eight *per Cent.* in caſe it is afterwards found that it ought ſo to be.

Provided always that Copies of every Thing, and a Day to anſwer ſhall be granted to the Reſpondent, on his requiring it before the Commiſſioners ſhall diſpoſe of the Money proviſionally depoſited.

48. Any Perſon being ſummoned concerning Damage, and not appearing in three Days to demand Copies, or to deſire a Day, he ſhall be proceeded againſt on the firſt, ſecond and third Default; and on the third Default the Money depoſited ſhall be diſpoſed of either proviſionally, or finally, in ſuch Manner as the Commiſſioners think proper.

49. It ſhall be lawful to appeal from the Decrees pronounced by the Commiſſioners, as alſo from the Regulation of groſs Averages, to the Magiſtrates (ſchepenen) of this City, within the Space of ten Days:

But from a proviſional Decree there ſhall be no Appeal.

50. All the Inſurers ſhall alſo be obliged, when a Repartition of Damages ſhall have been made and iſſued forth by the Commiſſioners of Inſurance and Average in this City, immediately to make good, and pay the ſaid Damages; and in Default thereof the Inſurer ſhall be obliged to pay to the Inſured Intereſt at eight *per Cent. per Annum*, from the Time that the ſaid Repartitions ſhall be diſpatched, and iſſued forth, till the actual Payment of the Money, wherein the Inſurers are caſt by the ſaid Commiſſioners.

51. On the Decrees of the Commiſſioners, Execution ſhall alſo be made, as is daily practiſed on the Decrees made by the worſhipful Sheriffs.

52. The Proceedings in the aforeſaid Chamber againſt the Non-appearers, concerning Damages demanded, ſhall be from three Days to three Days, for the firſt, ſecond, and a third Default; and the Parties being ſummoned, and not appearing, ſhall pay for the firſt Time ſix Stivers, for the ſecond Time twelve Stivers, and in Caſe of the third Default the Regulation of Art. XVIII. ſhall be obſerved: And the Coſts of Suit for the Defaults ſhall be diſburſed by the Plaintiffs; but ſhall be charged to the Non-appearer in the general Account of the Average.

53. The Citations touching groſs Averages ſhall be from eight Days to eight Days till the third Citation incluſive, when the Commiſſioners ſhall proceed to the Valuation of their Intereſt by the Manifeſts, as they in Equity ſhall think proper; and Non-appearers ſhall not be permitted to appeal: And concerning the Defaults, as in the foregoing Article is enacted.

54. All Merchants ſhall alſo be obliged to give up their Goods according to the true Value, (as is expreſſed in the Bills of Citation;) and they ſhall be obliged, at the Requiſition of the Commiſſioners, to confirm their Valuation by Oath.

55. And to the End that all Premiums of Inſurance for which the Inſurers give Credit to the Brokers, and others, may be ſpeedily recovered, the Commiſſioners are authorized and qualified to proceed againſt them, after the firſt and ſecond Demand made, *viz.* from Day to Day, and to grant Execution after the ſecond Demand.

56. And whereas the Contracts of Inſurance are judged to be Contracts of good Faith, wherein no Fraud or Deceit ought to take Place; in caſe that it is found that the Inſured or Inſurers, Captains, Shippers, Pilots or others, uſe Fraud, Deceit, or Craft, they ſhall not only not profit with their ſaid Deceit and Craft, but ſhall alſo be liable to the Loſs and Damage with Intereſt occaſioned by them, and be corporally puniſhed and corrected for a Terror and Example to others; even with Death, as Pirates and manifeſt Thieves, if it be found that they have uſed notorious Malverſation or Craft: The Whole according to the Edicts of the Country.

57. If it ſhall appear to the Commiſſioners, that any Abuſe is committed by any Perſon, in cauſing Policies to be underwrote after having received Notice that the Ships, or Goods, on which he cauſes Inſurance to be made, or loſt, taken, or periſhed; and that on one Policy firſt is cauſed to be underwrote a certain Sum on good Faith, and afterwards a certain Sum on evil Faith; in ſuch Caſes the Commiſſioners ſhall be obliged to refer the ſaid reſpective Matters, and alſo the Parties, to the worſhipful Magiſtrates of this City, and further to cauſe the Documents and Proofs delivered by the Parties, in their Hands to be carried to the ſaid worſhipful Magiſtrates.

58. For all Inſurances and Reinſurances to be made on ſundry Ships, for whatſoever Share the ſame may be made, or on ſeveral Goods laden in ſundry Veſſels, a ſeparate and diſtinct Policy ſhall henceforth be uſed, on Pain that all other Policies, in which ſhall be found more than one Ship, or ſome Shares in ſundry Ships, or ſundry Goods laden in ſeveral Ships; to be inſured

or reinſured, ſhall be held null, and of no Value; and conſequently henceforth no Decree on ſuch Policies ſhall be given.

No Book printers, Bookſellers, or other Perſons in this City ſhall be permitted to print or ſell Policies without Stamps on Penalty of three hundred Guilders.

60. No Inſurers, or Inſured ſhall underwrite, or cauſe to be underwrote, but on Policies furniſhed with a proper Stamp, and ſigned by the Secretary of the Chamber of Inſurance, who ſhall have three Stivers for the ſame; on Penalty of three hundred Guilders over and above the Penalty enacted by the general Edict and Ordinance concerning the ſmall Stamps, againſt the Defrauders of the Publick Revenue.

61. No Brokers, or others, ſhall make any Inſurance, or Reinſurance, or cauſe the ſame to be done, or procured, but on Policies ſtamped conformable to the Ordinance, on Penalty of one hundred Guilders for the firſt Time, one hundred Guilders for the ſecond Time, and Suſpenſion for ſix Weeks; and the third Time they commit the ſame, two hundred Guilders, and Diſmiſſion from their Office.

CHAP.

CHAP. IV.

Of FOREIGN EXCHANGES.

SECT. I.

Of the Nature of Gold and Silver, and the Method of aſſaying and refining it.

GOLD, when fully maturated or melted, hath neither a ſulphurous nor terreſtrial Impurity; but whilſt in a State of Concoction, it hath both joined, as appears in the native Ore: But then they do not ſo adhere as not to be ſeparable from it, which may not be done in other Metals without deſtroying both, as the Involution is ſo predominant in the latter, and ſo minutely found in the former.

Gold hath ſo little of theſe corruptible Principles mixed with it, that the inward Sulphur, or metalline Spirit, doth ſometimes overcome them of itſelf, as is to be ſeen in the Gold found pure on the Superficies of the Earth and the Sea Sands, often as pure as any refined Gold, and is waſhed down from the Mountains.

It is therefore the moſt noble and ſolid of all Metals, and, when of the higheſt Degree of Fineneſs, is of a deep yellow Colour, compacted of Principles digeſted to the uttermoſt Height, and therefore fixed.

Silver, in the higheſt Degree of Fineneſs, is a pure white, and in the next Degree of Dignity to Gold; and differs from it chiefly in Digeſtion, as there are ſome ſmall adhering Impurities.

It is, nevertheleſs, a Mineral of that excellent Quality, that, when perfectly fine, it will endure melting a long Time in extreme Heat, with but very little Waſte;

Waſte; which Quality is not in any other Metal except Gold, which in Perfection, will endure the Fire with leſs Waſte.

For theſe peculiar Excellencies, and their Capacity of being wrought into ſuch a Variety of uſeful and ornamental Things, they are deſervedly eſteemed above other Metals; and being the moſt precious of Minerals, and moſt portable, are very juſtly made the Medium of Trade, and to anſwer all the Purpoſes of Purchaſes or Barter by a ſtated Value and Equivalence.

Our *Anceſtors*, conſidering that Silver in its fineſt Degree was too ſoft for Uſe and Service, being almoſt as ſoft as Lead, did contrive at once to harden it for Service, and at the ſame Time preſerve its native Whiteneſs: And as too little Alloy left it too ſoft, ſo too much made it brittle, they, in a Courſe of various Proceſſes, found the true Medium to be *eighteen Penny weight of fine Copper to eleven Ounces two Penny-weight of fineſt Silver*, making together one Pound Troy. By which Standard is underſtood that Expreſſion in the Statute of *Eliz.* Cap. 15. *Not leſs in Fineneſs than that of eleven Ounces two Penny-weight.*

The firſt Contrivers and Fixers of this Alloy were the *Eaſterlings*, in the Time of *Richard* I. who came from the Eaſtern Part of *Germany*, and gave this Standard the Denomination of *Sterling*; and the Marks of the *Leopard's Head* is preſcribed by the Statute 28 *Ed.* I. Cap. 20.

The Standard of Gold is ſettled by the above Statute of *Eliz. at twenty two Carracts fine.*

Carracts are the 24th Part of either a Pound, or an Ounce Troy, and are thus compounded: Of the *Pound Carracts*, twenty-Penny-weights and twelve Grains Troy make a *Carract Grain*; four of ſuch *Carract Grains* make one *Carract*, or ten Penny-weight Troy; and twenty four of ſuch *Carracts* one Pound, or twelve Ounces Troy.

Of the *Ounce Carracts*, five *Troy Grains* make one *Carract Grains*; and four of ſuch *Carract Grains* make one

one *Carract*; and twenty four of ſuch *Carracts* make an Ounce Troy.

For the Diſcovery of falſe Gold and Silver from that which is good, and to know the true Value thereof, the Manner is; the Aſſay Maſter puts a ſmall Quantity of Silver on a *Cople* or *Teſt* on the Fire, and when refined to the higheſt Degree of Fineneſs taking it out again, he, with Scales that will turn with the hundredth Part of a Grain, by the Waſte of that ſmall Quantity computes how much Impurity or Adulteration is in each Ounce or Pound, from whence the Aſſay is taken.

The Aſſay of *Gold* is taken in the ſame Manner, and after being refined on the Cople, it is beat thin, and rolled up looſely, and then put into warm ſtrong *Aqua fortis*, which will purify it from the Silver, and the Gold will remain in the thin Plate, although very brittle.

Another Manner of Aſſay, without Fire.

Make ſeveral Needles of Silver Wire, each of them about four Inches long, and as big as a large Pack-needle, of various Degrees of Badneſs of Alloy; as one Needle 3 *d.* another 6 *d.* a third 9 *d.* a fourth 1 *s.* a fifth 1 *s.* 3 *d.* a ſixth 1 *s.* 6 *d.* in the Ounce worſe than the Standard.

Thus compoſed.

dwt. gr.		
9—12	of Sterling Silver	Theſe melted together will be 3 *d.* worſe than Standard.
0— 6	of Copper	
0— 6	of Braſs	
9— 0	of Sterling Silver	Theſe will be 6 *d.* worſe than Standard.
0—12	of Copper	
0—12	of Braſs	
8—12	of Sterling Silver	Theſe will be 9 *d.* worſe than Standard.
0—18	of Copper	
0—18	of Braſs	

And ſo by ſuch Degrees of a Penny-weight of Alloy in the Ounce you may compoſe ſeveral Alloys; for 4, 6, 8, 10, 12, 14, or 16 Needles, differing 3 *d.* in the Value of each Needle by the Ounce: and the ſureſt Way is, when the Needles are all made, to have a diſtinct Aſſay made of each Needle, and the reported Goodneſs marked on each of them.

Make theſe Needles all with Loops at one End, and hang them on a Ring of Silver Wire, and all with blunt ſmooth Points.

The Silver you would try by theſe Needles rub on a ſmooth clean Touch-ſtone, than by it rub the Needles as you judge neareſt the Teſt; and ſo continue the Experiment, until you find the Touch of the coarſe Silver and the Needle to be alike: Then for the Value, refer to the Mark on your Needle.

A compleat Ring of Needles may be made under the Weight of two Ounces, and if prettily formed, and ingeniouſly managed, will make a Diſcovery, very near, of the Badneſs of any Sort of adulterated Silver.

In the ſame Manner, ſmall Pieces of Gold of ſeveral Alloys may be fixed at the Ends of the Silver Needles, for the judging the Degree of Adulteration in Gold.

As to a *general Judgment* of the *Fineneſs* of Silver, you may try it thus: Rub ſome Place leaſt in Sight with a File of indifferent Fineneſs, and if it be *worſe* than *Sterling*, it will appear yellowiſh; or after filing it, rub it on the Touch-ſtone, and cloſe by it rub the Edge of a Half Crown, or other Piece of Standard Silver of like Thickneſs, and the Difference, if any, will appear.

The Reaſon of filing is, becauſe the artificial boiling of coarſe Silver-work will ſo eat or diſſolve the Alloy that is on the Surface or Outſide thereof, that unleſs it be filed, it will touch on the Stone Six-pence or Eight-pence in the Ounce better than it is.

There is good Cauſe to ſuſpect the Coarſeneſs of the Silver, when the Work riſes in Bliſters, or peels,

or

or ſcales off in thin Scurf, or Flakes; which Scale, Scurf, or Bliſtering, is cauſed by the heating the Alloy as aforeſaid; and the Silver thus ſeparated from the Alloy will remain of an infirm ſpungy Body, therefore peel as aforeſaid.

Touch-ſtones are uſually purchaſed of the Ironmongers; the beſt Sort are very black, and of a fine Grain, poliſhed very ſmooth, and without any ſpungy or grain Holes, and near the Hardneſs of a Flint, but yet with ſuch a ſharp cutting Grit, that it will cut or wear the Silver or Gold when rubbed thereon.

To make a true Touch, take care that the Stone be very clean; and to make it ſo, if foul or ſoily, firſt wet it, then rub it dry with a clean woollen Cloth. If the Stone be very hard, and is full of Touches of Gold or Silver, you muſt rub them off with a Pummice Stone; if not very hard, rub them firſt with a fine blue Hone, and then with a well burnt Charcoal in Water, and obſerve that the ſmoother you make the Touch-ſtone, the cleaner will be the Touch; therefore, whether you uſe the Pummice, Hone, or Charcoal, prepare them very even, and rub them on the Touch-ſtone very lightly; and if there be any Grain, croſs it lightly, then, your Silver being filed, rub it ſteadily and very hard on the Stone, not extending the Touch above a Quarter of an Inch long, and no broader than the Edge of a Five Shilling Piece; and when you have touched with the ſeveral aſſayed Needles, wet all the touched Places with your Tongue, and each will reſpectively ſhew itſelf in its proper Countenance.

The Gold Standard, by Law, is twenty two *Carracts* of the fineſt Gold, and two *Carracts* of fine *Copper* and *Silver*, equal Parts; and by this may be clearly underſtood that Expreſſion in the Statute 18 *Eliz.* Cap. 15. *Not leſs in Fineneſs than that of twenty two Carracts*, to be the Standard for all Gold Wares, worſe than which Alloy no Gold Wares are to be made, under the Penalty therein mentioned.

And

And if any Perſons are deſirous of having what they have purchaſed either of Gold or Silver Wares aſſayed, they may apply to the *Aſſay-Maſter* at *Goldſmiths-Hall*, whoſe Fee is Six-pence an Aſſay of Gold; and if refuſed, or the Perſon diſſatisfied with the Operation, they may apply to the Aſſay-Maſter of the *Mint* in the *Tower*, whoſe Fee is for a Gold Aſſay one Shilling, and for Silver Six-pence.

And here note, twelve Grains Troy is ſufficient for any Aſſay of Gold.

And note further, that the Aſſay-Scales muſt turn with the 740th Part of a Grain Troy; and that the Standard Aſſay Weight being in one Pan of the Scale, the Weight of Alloy in 12 Grains of Standard muſt be in the other, with the refined Silver: and if that make the Ballance even, then the Silver from whence it is extracted is Standard. The ſame Method may be uſed in aſſaying of Gold.

It is not lawful to uſe any other than Troy Weight for the weighing of Gold and Silver; of which

24 Grains make an old Sterling Penny, or three Penny-weight.

20 Penny-weight, one Ounce.

12 Ounces, one Pound.

The compounding theſe Weights for the aſſaying and computing the Standard of Gold as aforeſaid, are called *Carracts*.

There are other Sorts of *Carracts* compounded of Troy Grains, thus:

4 Grains make a *Carract*.

6 of ſuch *Carracts* make a Penny-weight.

120 of ſuch *Carracts* make an Ounce Troy.

Theſe are only uſed to weigh Diamonds, *&c.*

As to *Silver Coin*, it being not above a fifteenth Part equally valuable as Gold, or thereabouts, needs not ſo attentive a Regard, and will ſufficiently prove its Badneſs, if baſe, by the Chink, as not ſounding upon a Table like Silver; eſpecially if it be of other Metal plated over, then the Sound will be dead and flat, by reaſon of its Diſunion from what it is laid upon;

upon; and if it be mixed, and of a very groſs Alloy, it may be diſcovered by the Impurity of its Aſpect, and at laſt you have the Remedy of the Goldſmith's Tool, the File, and the Touch, as before directed. However, you muſt obſerve, that even pure Standard Coin will not ſound in the chinking, if it be flawed.

The Value of Gold has put the ingenious upon all experimental Methods of Aſcertainment; and, in Conſequence, its Weight hath been fixed, by proportioning it to the Gravity of other Bodies: which thoroughly underſtood and attended to by thoſe who deal much in foreign *Gold* and *Silver*, eſpecially on the *Guinea* Coaſt and in *China*, will need no other Aſſay for the knowing of pure Gold. The Proportions are,

Water to Gold as 19,636 to 1000.

Hence the ſpecific Gravity proportionate of ſeveral Metals, by this Means determined, ſtands thus:

Gold	19,636	Iron	7,852
Quick-ſilver	14,019	Tin	7,321
Common Lead	11,345	Diamond	3,400
Standard Silver	10,535	Water	1,000
Copper	8,843	Air	$\frac{1}{17}$ *Gr.*

When reduced into the Cubical Inch their Weights are,

	Ounces.	*Drachms.*	*Grains.*
Gold	12	2	52
Quick-ſilver	8	6	8
Lead	7	5	30
Silver	6	5	28
Copper	5	6	26
Iron	5	1	24
Tin	4	6	7

Obſerve, that when by the above Proportion you weigh Metals againſt Water, that it be not highly impregnated with any Kind of Mineral or other Impurities, it having been demonſtrated that even River-water weighs more by 3 Pounds in 53, than Rain-

Rain-water; ſo that where clear Water cannot be had, it may be beſt to throw out the Fraction, and balance only by 19 to 1.

Mr. *Vaughan* ſuppoſes that *Archimedes*, by an Experiment of this Kind, diſcovered the Quantity of Alloy put by the Workmen into the Crown of Gold made for *Hiero* King of *Syracuſe*. *Univerſal Merchant*, P. 111, *&c.*

SECT. II.

Abſtract of the Indenture between his Majeſty, and the Maſter and Worker of the Mint.

THE King, by Indenture under the Great Seal, confirms the Office of Maſter and Worker of the *Mint* to *A. B.* during Pleaſure; and he is to receive all the Monies appointed by Acts of Parliament for defraying the Expences of the *Mint*.

A. B. covenanteth to make the Money in Manner following, *viz.*

To make five Sorts of Money of Crown Gold.

1. The Quarter Guinea, Value 5 *s.* 3 *d.* at 178 in the Pound Weight Troy. This is not to be coined but by his Majeſty's, or the Treaſury's ſpecial Direction.

2. Half Guinea, Value 10 *s.* 6 *d.* at 89 in the Pound Weight.

3. The Guinea, Value 21 *s.* at 44, and the Weight of 10 *s.* 6 *d.* to the Pound Weight.

4. The Double Guinea, Value 42 *s.* at 22, and the Weight of 10 *s.* 6 *d.* in the Pound.

5. The Five Guinea Piece, or 5 *l.* 5 *s.* at 9, wanting the Weight of 10 *s.* 6 *d.* in the Pound.

Every Pound Weight Troy of Gold to be in Value 46 *l.* 14 *s.* 6 *d.* in Fineneſs at the Trial, 22 Carrats of fine Gold, and two Carrats of Alloy: This to be the Standard of Gold.

The Maſter to have 6 *s.* 6 *d.* for the Coinage of every Pound Weight Troy of Gold Monies; out of which he is to pay unto the Moniers 3 *s.* for their Labour for every Pound Weight.

If the Gold Money be not continually made according to the right Standard, but in Default of the Maſter, it ſhall be found ſometimes too ſtrong or too feeble, by too much or too little in Weight, in Fineneſs, or both, the ſixth Part of a Carrat in a Pound (which ſhall be called *Remedy for the Maſter*) the Money ſhall be delivered for good.

But if Default be over the 6th Part of a Carrat, the Deliverance ſhall ceaſe, and that Money adjudged leſs than good, and be new molten, and be re-coined at the Charge of the Maſter, till it be put to Point as Money deliverable.

Excepting only the Quarter Guineas; for theſe Pieces not being able to be ſized with the ſame Exactneſs as the larger Pieces of Gold may be, there ſhall be added to the ſaid Remedy in Weight, half a Grain for every four Quarter Guineas in the Pound Weight of the Monies tried.

Theſe Defaults muſt happen by Caſualty, or elſe no Allowance for them.

The Gold is to be coined in ſuch Pieces as his Majeſty, by his Sign Manual, ſhall direct.

The Maſter to make eight Pieces of Silver Monies, *viz.*

1. The Crown at 5 *s.* and 12 of them, and 2 *s.* in the Pound Weight.
2. Half-Crown at 2 *s.* 6 *d.* and 24 and 2 *s.* in the Pound.
3. The Shilling at 12 *d.* and 62 to the Pound.
4. Half Shillings at 6 *d.* and 124 in the Pound.
5. The Groat, or 4 *d.* and 186 in the Pound.
6. The Half Six-pence, or 3 *d.* at 248 in the Pound.
7. The Half-Groat, or 2 *d.* at 372 in the Pound.
8. The Penny, 744 in the Pound.

The

The Pound Weight of Silver to be 3 *l.* 2 *s.* and ſhall be in Fineneſs at the Trial eleven Ounces two Pennyweight, and eighteen Pennyweight of Alloy, which is the old right Standard of the Monies of *England*.

The Gold Money is to be made agreeable in Fineneſs to the indented Trial-pieces made by Direction of King *James* II. *Anno quarto reg. ſui*, and all Monies of Standard Silver, agreeable in Fineneſs to the reſpective Trial-Pieces made 1 *Geo.* II. which Trial-pieces remain in ſix ſeveral Places, *viz.* in the Treaſury, with the Warden of the *Mint* in the Tower, the Maſter and Worker, the Wardens of the Company of *Goldſmiths*, in *Goldſmiths Hall*, in the Exchequer of *Scotland*, and with the General and other Officers of the Mint in *Scotland*.

The Maſter to have 1 *s.* 4½ *d.* for Charges of coining every Pound Weight Troy of Silver Monies, of which he is to pay 8 *d.* for every Pound Weight to the Moneyers.

The Maſter is to pay the Warden of the *Mint* 1470 *l. per Annum*, for the Fees and Salaries of the reſpective Officers of the *Mint*.

The Remedy for the Maſter in the Silver Money is, when on Aſſay before Delivery, the Money is found too ſtrong or too feeble, all only in Weight, or all only in Fineneſs, or in both, by two Pennyweight in the Pound Troy, after the old Computation of twenty Pennyweight in the Ounce. And if Default be over the ſaid two Pennyweight, the Money ſhall ceaſe to be delivered, and be re-coined at the Charge of the Maſter.

The Maſter may receive, as well as his Majeſty's Bullion of Gold and Silver, the Bullion of any other Perſons whatſoever, to be coined as aforeſaid, delivering to the Parties, bringing the Bullion, Bills teſtifying the Weight, Fineneſs and Value thereof, with the Day and Order of its Delivery into the *Mint*.

The Warden and Comptroller of the *Mint*, and his Majeſty's Chief Clerk, and Clerks of the Papers, for the Time being, ſhall enter in Ledger-Books, all Bullion that ſhall be brought into the *Mint*; which Entry ſhall comprehend the Weight, Fineneſs and Value of the ſaid Bullion, the Parties Names who brought it, and what Day. And then the Bullion is to be put in a Cheſt or Room, locked with three Keys, one of which is to be kept by the Warden, another by the Maſter, and the third by the Comptroller, and to remain there till delivered for Coinage.

The Warden, Comptroller, and his Majeſty's Clerk, ſhall keep ſeveral Books of melting, declaring in the ſame, the Quantity and Fineneſs of all Gold and Silver and Alloy put into the Melting, with the Report of every Aſſay, called *the Pot-aſſay*; and the ſaid Books ſhall remain to charge the Maſter withal, and they ſhall be monthly ſubſcribed, and figured by the Warden, and the Maſter and Comptroller.

The Aſſay-maſter ſhall keep a Book of all Bullion brought into the Mint, whereby the Quantity and Fineneſs may appear, with the Report of the Aſſay of every ſeveral Pot, commonly called the Pot-aſſay, which ſhall be made of ſome Ingot of the ſaid Bullion, to be taken by the Warden, Comptroller, and Aſſay-maſter, or any two of them, after the Pot is caſt out.

If any happen to bring into the *Mint*, Gold and Silver nigh to the Standard aforeſaid, the Maſter ſhall receive it for the Value accordingly, ſo as the Charges to make it agreeable to the Standards aforeſaid, be born by his Majeſty.

The Maſter impowered to put ſuch privy Mark on the Edges of Gold and Silver Coin, from Time to Time as he ſhall think convenient.

The Warden and Comptroller, or their Deputies, are to overſee and ſurvey the aſſaying, melting, fizing and making of the Gold and Silver Monies, and

to

to ſee the Balances and Weights always amended and put to Point.

The Surveyor of the Meltings ſhall keep a Book, containing the Weight of Gold and Silver as ſhall be molten, with the Alloy put into the ſame.

When the Monies be coined and complete, the Warden, Maſter, and Comptroller, ſhall put them into a Cheſt or Room, locked with three Keys, one of which is to be kept by each of them, until Proof and Trial be had of the ſaid Money, and Payment be made to the Bringers-in of the Bullion.

The Proof to be made before Deliverance by the Aſſay-maſter, in Preſence of the Warden, Maſter and Comptroller: And, being made, a Portion of the ſaid Monies ſhall be taken and put into a Box by the Warden or his Deputy, in the Preſence of the Comptroller and Maſter, or their Deputies; whereof the Aſſay ſhall be made before his Majeſty, or ſuch of his Council as ſhall be appointed by him at *Weſtminſter*, or elſewhere, as he or his Council ſhall think fit, *viz.*

For every Journey-weight of Gold, not exceeding fifteen Pounds Weight, two Pieces, whereof the one to be for the Pix, and the other for the Aſſay.

Out of every Journey of Silver Monies, containing ſixty Pounds Weight, two Pieces, at leaſt, the one Moiety thereof to be given for the Pix, and the other for the Aſſay.

They ſhall be ſealed with the Seals of the Warden, Maſter and Comptroller, and the Box ſhall be ſhut with three Keys, which ſhall by them be kept.

And the Pix ſhall remain in a Cheſt or Room, as aforeſaid, to be opened on reaſonable Warning, when his Majeſty or his Council ſhall appoint.

And Aſſays ſhall be made in the Preſence of the Warden, Maſter, and Comptroller, of the Fineneſs and Weight of the Gold and Silver in the Box by Fire, Water, Touch, or Weight, or by all; that if they be found good, the Maſter be quit againſt his Majeſty and all his People to that Day; and the

Maſter then to have Letters Patent for his Acquittance, without Fee; and this Indenture to be a ſufficient Warrant for putting the Great Seal thereto.

If the Money ſhall not, on the Aſſay, be of the full Standard, yet within the Remedies aforeſaid, the Lack thereof ſhall be entered on Record, by the Warden and Comptroller, or whom they ſhall appoint, and a true Account thereof ſhall be made to his Majeſty, and the ſame be fully anſwered to his Majeſty, without any Profit to grow to any other Perſon for the ſame.

Saving that in Caſe by the ſaid Aſſay, it ſhall be found that the ſame Monies do paſs at any Time the ſaid Standards, ſo as to be better, but yet within the Remedies, then ſo much ſhall be entered of Record, and hold Place to the Maſter, in the Charge which he ſhall have, when any Lacks ſhall be found by the ſaid Aſſay under the Standard.

If any Default be found in the ſaid Monies, without the ſaid Remedies, the Maſter ſhall make Fine and Ranſom to his Majeſty at his Will.

The Warden, Maſter and Comptroller, may take up as often as they will, as many Gravers to grave Irons at his Majeſty's Price, and as many Smiths, Workmen and Labourers, and Neceſſaries for making the ſaid Irons and Monies, and doing all Buſineſs in the *Mint*, as they ſhall think fit, and puniſh or remove them as they ſhall think fit, on due Occaſion; and all his Majeſty's Officers are to be aiding to them therein.

The Maſter is bound to receive all Gold and Silver brought to the *Tower*, after the Value as it ſhall appear by the Aſſay to be better or worſe than the Standard.

And in Caſe of Diſpute of the true Value between the Maſter and Merchant, his Majeſty's Aſſay-maker, in the Preſence of the Warden, Maſter and Comptroller, ſhall try the ſame; and the Maſter ſhall receive the ſame, and ſtand charged in Manner as it belongeth,

All

All Officers of the *Mint* and their Servants, and all Perſons bringing Gold or Silver to the Tower, ſhall have free Ingreſs and Egreſs at all Times, without Arreſt for Debt or other Matter, by the Officers of the Tower, and without any Fee.

The Warden, Maſter, and Comptroller, are bound to give their Attendance at the *Mint* every *Wedneſday*, or ſuch other Days as they ſhall appoint, for receipt of Bullion and Delivery of coined Monies.

The Maſter is to pay 52 *l.* *per Annum* towards the Charges of the Diet of 104 *l.* heretofore allowed to the Officers of the *Mint*, and his Majeſty is to pay and allow the other 52 *l.* to be paid by the Warden.

The Warden to account yearly before the Auditor of the *Mint*, and to be allowed on the ſame, all Payments and Receipts, vouched by the Maſter, Comptroller, and Aſſay-maſter, or any two of them, whereof the Maſter to be one. And on ſtating and anſwering his ſaid Account, the Warden to have Letters Patent of Acquittance, under the Great Seal, without Fee thereof.

Confirmation to all Officers of the *Mint*, of all Houſes and Grounds, within the *Mint*, exempt from any Claim of the Officers of the *Tower*.

All Charters and Franchiſes alſo confirmed to them.

The Moniers, Workmen, and all other Miniſters of the *Mint*, to be ready to do their Work at the Warning of the Warden, Maſter, and Comptroller, on pain of Loſs of Franchiſe and Impriſonment.

The Gold and Silver by the Maſter delivered to the Moniers to be coined, ſhall be in clean Plates, and delivered by Weight; and the Moniers to re-deliver the ſame, when coined, in clear Pieces proportionably by the ſame Weight; and if any Thing lack of the ſame Weight, they are to content the ſaid Maſter for the ſame, at every Deliverance at the Balance; and the Maſter then is to pay them their Wages. And to perform his Covenants to the King and his People,

the Maſter has taken his Oath in Chancery, and given Sureties in the Exchequer in 2000*l.*

The Maſter covenants from Time to Time to bring into the *Mint* convenient and ſufficient Supplies of Gold and Silver, and make full Payments and Deliverance of all Manner of Monies, with all convenient Speed; and to bear all Manner of Waſte about coining, according to the Allowances before ſpecified.

The Warden is to pay the Officers of the Mint their Wages appointed.

The Maſter is bound to bring all the Gold and Silver that he ſhall receive by colour of his Office into the *Mint*, to be made into Monies without Sale, aliening, or putting it to any other Uſe: Excepting all ſuch Healing-pieces, Seals, and Medals of Gold and Silver, as ſhall be made for his Majeſty's Uſe, or by his Majeſty's Command.

The Warden, when he ſhall think fit, is to make two Piles of *Engliſh* Weights, that may be done with the moſt Exactneſs, to be equal to thoſe lawfully uſed in the *Mint*; which, when made, ſhall be brought to the *Tower*, and there examined and printed, with a Roſe crowned, and a Thiſtle crowned, in Preſence of the Officers of the *Mint*; and then the Warden ſhall deliver one of them to the General of the Mint in *Scotland*, to be carried and remain there, and the other to remain in the *Tower* with the ſaid Warden.

The Maſter to account yearly before the Auditor of the *Mint*, and his Account being ſtated and fully anſwered, he ſhall have Letters Patent for his Acquittance without Fee, and this Indenture to be a ſufficient Warrant to put the Great Seal thereto.

The Maſter is to pay from Time to Time, to the Warden, ſuch Sums as ſhall be requiſite to be paid to Officers for their Fees and for Repairs, and ſuch other Expences of the *Mint*.

The Maſter is to retain in his Hands out of the Monies to be received on the Act for encouraging the Coinage,

Coinage, 1255 *l. per Annum*, for Fees and Salaries due to himſelf and other Officers.

The Warden, Maſter and Comptroller, and their Deputies, ſhall, before their being admitted into the Knowledge of the Invention of rounding of his Majeſty's Monies, and marking the Edges of them with Letters of Grainings, take an Oath before the Treaſury, not to reveal the ſame to any Perſon whatſoever, directly or indirectly, without Command of his Majeſty, his Heirs or Succeſſors; and the Workmen employed in making the ſaid Inſtruments, ſhall take the like Oath before the Warden of the *Mint*.

The Provoſt and Moniers, their Apprentices and Servants, are ſtrictly charged not to vend, pay, or diſtribute any Piece of coined Money, until the ſame be delivered, according to the Courſe of the *Mint*, on pain of loſing their Franchiſe, and Impriſonment.

That no Perſon inhabit within the *Mint*, without the Approbation of the Warden, Maſter and Comptroller.

The Comptroller is to deliver, on Oath, before one of the Barons of the Exchequer, a Roll, called the Comptrollers Roll, containing an Account of all the Gold and Silver Bullion, and Alloy molten, and all Gold and Silver Monies coined monthly in the *Mint*.

And the Maſter, or his Deputy, ſhall pay to ſuch Workmen, as ſhall be employed in making of ſeveral Gold and Silver Pieces round, before they are ſized, and marking the Edges with Letters or Grainings, and for keeping in Repair all the Rollers and Inſtruments to cut, flatten, make round, and ſize the Pieces, and to mark the Edges of the Monies with Letters or Grainings, and all other Tools, Engines and Inſtruments, ſuch Allowances as ſhall be directed by the Treaſury, not exceeding Six-pence for every Pound Weight Troy of Gold Monies, and 1 $\frac{1}{2}$*d.* for every Pound Weight Troy of Silver Monies.

The Maſter is to pay to the Provoſt and Company of Moniers one Penny by Tale, for every Pound Weight

Weight of all Silver Monies to be coined, over and above the ordinary Price of Eight-pence allowed them.

Provided that the Moniers having the Gold and Silver delivered to them in clean Ingots, fit to be wrought, ſhall deliver ſeven twelfths of the ſame in Money, ſo that there be but five Parts in twelve Sciſſel.

The Clerk of the Irons is to keep a true Account of all the blank Dies for coining the Gold and Silver Monies which ſhall be delivered to the chief Engraver or Engravers of the *Mint*; and alſo of all the blank Dies, which ſhall be ſunk or ſtamped by the ſaid Graver or Gravers; and of all Dies, which, after ſinking, ſhall be made fit for Uſe and hardened.

And the Graver or Gravers are ſtrictly enjoined to return monthly to the Clerk of the Irons, all Dies that ſhall from Time to Time be faulty and worn, to be defaced in Preſence of the Wardens, Maſter, and Comptroller.

And the Clerk of the Irons is enjoined to give an Account to the Warden, Maſter, and Comptroller, of what blank Dies have been delivered to the Gravers, or ſunk by them, or hardened by the Smith, and what faulty ones have been returned by them to be defaced, and what are remaining in their Hands.

The Gravers ſhall not make any Puncheons, Matrices, Dies or Stamps, but in ſuch Places of the *Mint* as ſhall be appointed by the Maſter, Warden, and Comptroller.

For the more exact ſizing of Gold and Silver Coins to be made by the Mill and Preſs, it is commanded, that the counterpoiſe of the reſpective Gold and Silver Coins be made lighter than their juſt Weight, according to the Proportions following, *viz.*

That two Grains be taken from the Counterpoiſe of the Crown;
One Grain from the Half-Crown;
Half a Grain from the Shilling;

One

One fourth of a Grain from the Six-pence;
Two Grains from the Five-Guinea Piece;
One Grain from the Forty-two Shilling Piece;
Half a Grain from the Guinea;
One-fourth of a Grain from the Half-Guinea;
One-eighth of a Grain from the Quarter-Guinea.

The Provoſt and Moniers, and their Apprentices, are to attend Morning and Evening, in ſuch Manner as the Maſter ſhall appoint, on pain of being removed, or otherwiſe puniſhed, as the Maſter, Warden, and Comptroller ſhall think proper.

Theſe Agreements to be in Force only during his Majeſty's Pleaſure. *Univer. Merchant*, P. 95. *et ſeq.*

SECT. III.

Sir Iſaac Newton's *Repreſentation to the Lords of the Treaſury in the Year* 1717, *on reducing the Guinea from* 1 *l.* 1 *s.* 6 *d. to* 1 *l.* 1 *s. to prevent the melting down of the Silver Coin.*

IN Obedience to your Lordſhips' Order of Reference of *Auguſt* 12, that I ſhould lay before your Lordſhips a State of the Gold and Silver Coins of this Kingdom, in Weight and Fineneſs, and the Value of Gold in Proportion to Silver, with my Obſervations and Opinion, and what Method may be beſt for preventing the melting down of the Silver Coin; I humbly repreſent, that a Pound Weight Troy of Gold, eleven Ounces fine, and one Ounce Alloy, is cut into 44½ Guineas; and a Pound Weight of Silver, eleven Ounces two Pennyweight fine, and eighteen Pennyweight Alloy, is cut into ſixty-two Shillings; and according to this Rate, a Pound Weight of fine Gold is worth fifteen Pounds Weight ſix Ounces

ſeventeen

ſeventeen Pennyweight and five Grains of fine * Silver, reckoning a Guinea at 1 *l.* 1 *s.* 6 *d.* in Silver † Money. But Silver in Bullion exportable, is uſually worth 2 *d.* or 3 *d. per* Ounce more than in Coin. And if at a Medium, ſuch Bullion of Standard Alloy be valued at 5 *s.* 4½ *d. per* Ounce, a Pound Weight of fine Gold will be worth fourteen Pounds Weight eleven Ounces twelve Pennyweight nine Grains of fine Silver in Bullion. And at this Rate, a Guinea is worth but ſo much Silver as would make 20 *s.* 8 *d.* When Ships are lading for the *Eaſt Indies*, the Demand of Silver for Exportation raiſes the Price to 5 *s.* 6 *d.* or 5 *s.* 8 *d. per* Ounce, or above; but I conſider not thoſe extraordinary Caſes.

A *Spaniſh* Piſtole was coined for thirty two Reals, or four Pieces of Eight Reals, uſually called Pieces of Eight, and is of equal Alloy, and the 16th Part of the Weight thereof. And a Doppio Moeda of *Portugal* was conied for ten Cruſadoes of Silver, and is of equal Alloy; and the 16th Part of the Weight thereof: Gold is therefore in *Spain* and *Portugal* of ſixteen Times more value than Silver of equal Weight and Alloy, according to the Standard of thoſe Kingdoms; at which Rate, a Guinea is worth ‡ 22 *s.* 1 *d.* But this high Price keeps their Gold at home in good Plenty, and carries away the *Spaniſh* Silver into all *Europe*; ſo that at home they make their Payments in Gold, and will not pay in Silver without a Premium. Upon the coming in of a Plate fleet, the Premium ceaſes or is

* 1 *lb.* fine Gold is 1 $\frac{1}{11}$ Standard.
44 ½ Guineas.
21 ½ Shillings.

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956 ¾ is 1043 $\frac{8}{11}$ Shillings Standard.
1 *lb.* fine Silver is 1 $\frac{18}{22}$ *lb.* Standard.
62 *s.* is 67 $\frac{3}{11}$ Standard. *lb. oz. dwt. gr.*
Therefore 67 $\frac{3}{11}$: 1 : : 1043 $\frac{8}{11}$: 15. 6 17 5

† *January* 13, 1717, the Guinea, by the King's Proclamation, was reduced to 21 Shillings.

‡ A *Spaniſh* Piſtole is now forty Reals, and the Proportion between Gold and Silver as explained in the following Section.

but

but ſmall; but as their Silver goes away and becomes ſcarce, the Premium increaſes, and is moſt commonly about ſix *per Cent.* which being abated, a Guinea becomes worth about 20 *s.* 9 *d.* in *Spain* and *Portugal.*

In *France*, a Pound Weight of fine Gold is reckoned worth fifteen Pounds Weight of fine Silver: In raiſing or falling their Money, their King's Edicts have ſometimes varied a little from this Proportion, in Exceſs or Defect; but the Variations have been ſo little, that I do not here conſider them *.

By the Edict of *May* 1709, a new Piſtole was coined for four Lewiſes, and is of equal Alloy, and the 15th Part of the Weight thereof, except the Errors of their Mints. And by the ſame Edict fine Gold is valued at fifteen Times its Weight of fine Silver; and at this Rate a Guinea is worth 20 *s.* 8½ *d.* I conſider not here the Confuſion made in the Monies in *France* by frequent Edicts, to ſend them to the Mint, and give the King a Tax out of them; I conſider the Value only of Gold and Silver in Proportion to one another.

The Ducats of *Holland* and *Hungary*, and the *Empire*, were lately current in *Holland* among the common People in their Markets and ordinary Affairs, at five Guilders in Specie and five Stivers, and commonly changed for ſo much Silver Monies in Three-Guilder-Pieces, as Guineas are with us for 21 *s.* 6 *d.* Sterling; at which Rate a Guinea is worth 20 *s.* 7½ *d.*

According to the Rates of Gold to Silver in *Italy*, *Germany*, *Poland*, *Denmark*, and *Sweden*, a Guinea is worth about 20 *s.* 7 *d.* 5 *d.* or 4 *d.* for the Proportion varies a little within the ſeveral Governments in thoſe Countries. In *Sweden* Gold is loweſt in Proportion to Silver; and this has made that Kingdom, which formerly was content with Copper-Money, abound of late with Silver, ſent thither (I ſuſpect) for naval Stores.

* How the Proportion is now, is explained in the following Section.

In

In the End of King *William*'s Reign, and the first Year of the late Queen, when foreign Coins abounded in *England*, I caused a great many of them to be assayed in the Mint, and found by the Assays, that fine Gold was to fine Silver in *Spain*, *Portugal*, *France*, *Holland*, *Italy*, *Germany*, and the *Northern* Kingdoms, in the Proportions above mentioned, Errors of the Mint excepted.

In *China* and *Japan* a Pound Weight of fine Gold is worth but nine or ten Pounds Weight of fine Silver; and in *East India* it may be worth twelve. And this low Price of Gold in Proportion to Silver, carries away the Silver from all *Europe**.

So then, by the Course of Trade and Exchange between Nation and Nation in all *Europe*, fine Gold is to fine Silver as 14 $\frac{4}{5}$, or 15 to 1; and a Guinea at the same Rate, is worth between 20*s.* 5*d.* and 20*s.* 8$\frac{1}{2}$*d.* except in extraordinary Cases, as when a Plate-fleet is just arrived in *Spain*, or Ships are laden here for the *East Indies*, which Cases I do not here consider. And it appears by Experience, as well as by Reason, that Silver flows from those Places, where its Value is lowest in Proportion to Gold, as from *Spain* to all *Europe*, and from all *Europe* to the *East Indies*, *China*, and *Japan*; and that Gold is most plentiful in those Places in which its Value is highest, in Proportion to Silver, as in *Spain* and *England*.

It is the Demand for Exportation which hath raised the Price of exportable Silver about 2*d.* or 3*d.* in the Ounce, above that of Silver in Coin, and hath thereby created a Temptation to export or melt down the Silver Coin, rather than give 2*d.* or 3*d.* more for foreign Silver; and the Demand for Exportation arises from the higher Price of Silver in other Places than in *England*, in Proportion to Gold; that is, from the

* Till about the Year 1732, we know of great Quantities of Silver going from *Europe* to *China*, to fetch Goods back, which has caused the Price of Gold in *China* to rise so much, that it is now not worth sending any Silver thither. *Univ. Merch.* P. 90.

higher

higher Price of Gold in *England* than in other Places, in Proportion to Silver, and therefore may be diminiſhed by lowering the Value of Gold in Proportion to Silver. If Gold in *England*, or Silver in *Eaſt India*, could be brought down ſo low as to bear the ſame Proportion to one another in both Places, there would be here no greater Demand for Silver than for Gold to be exported for *India*; and if Gold were lowered only ſo as to have the ſame Proportion to the Silver Money in *England* which it has to Silver in the reſt of *Europe*, there would be no Temptation to export Silver rather than Gold to any other Part of *Europe*. And to compaſs this laſt, there ſeems nothing more requiſite than to take off about 10 *d.* or 12 *d.* from the Guinea, ſo that the Gold may bear the ſame Proportion with the Silver Money in *England*, which it ought to do by the Courſe of Trade and Exchange in *Europe*: But if only 6 *d.* were taken off at preſent, it would diminiſh the Temptation to export or melt down the Silver Coin; and by the Effects would ſhow hereafter better than can appear at preſent, what further Reduction would be moſt convenient for the Publick.

In the laſt Year of King *William*, the Dollars of *Scotland*, worth about 4 *s.* 6 *d.* were put away in the North of *England* for 5 *s.* and at this Price began to flow in upon us. I gave Notice thereof to the Lords Commiſſioners of the Treaſury, and they ordered the Collectors of Taxes to forbear taking them, and thereby put a Stop to the Miſchief.

At the ſame Time the Louis d' Ors of *France*, which were worth but 17 *s.* $\frac{1}{4}$ *d.* apiece, paſſed in *England* for 17 *s.* 6 *d.* I gave Notice thereof to the Lords Commiſſioners of the Treaſury, and his late Majeſty put out a Proclamation, that they ſhould go but at 17 *s.* and thereupon they came to the Mint, and 1,400,000 *l.* were coined out of them; and if the Advantage of $5\frac{1}{2}$ *d.* ſufficed at that Time to bring into *England* ſo great a Quantity of *French* Money, and the Advan-

tage of three Farthings in a Louis d'Or to bring it to the Mint, the Advantage of $9\frac{1}{2}$ *d.* in a Guinea, or above, may have been ſufficient to bring the great Quantity of Gold which has been coined in theſe laſt fifteen Years, without any foreign Silver *.

Some Years ago, the *Portugal* Moidores were received in the Weſt of *England* at 28 *s.* apiece; upon Notice from the *Mint*, that they were worth only about 27 *s.* 7 *d.* the Lords Commiſſioners of the Treaſury ordered their Receivers of Taxes to take them at no more than 27 *s.* 6 *d.*

Afterwards many Gentlemen in the Weſt ſent up to the Treaſury a Petition, that the Receivers might take them again at 28 *s.* and promiſed to get Returns for this Money at that Rate, alledging that when they went at 28 *s.* their Country was full of Gold, which they wanted very much: But the Commiſſioners of the Treaſury conſidering, that at 28 *s.* the Nation would loſe 5 *d.* apiece, rejected the Petition. And if an Advantage to the Merchant of 5 *d.* in 28 *s.* did pour that Money in upon us, much more hath an Advantage to the Merchant of $9\frac{1}{2}$ *d.* in a Guinea, or above, been able to bring into the Mint Great Quantities of Gold without any foreign Silver, and may be able to do ſtill, till the Cauſe be removed.

If Things be let alone till Silver Money be a little ſcarcer, the Gold will fall of itſelf; for People are

* As *France* always had the Balance of Trade with *England* on their Side, theſe 1,400,000 Louis d'Ors apparently came for fetching Silver, and cannot be conſidered as to have been of any Advantage to *England*. It is no Wonder that the Advantage of three Farthings in a Louis d'Or ſhould bring them into the Mint in *England*, ſince he who brought it in was at no Charges; and what he received back thereby became the Coin, which no Body would refuſe to take: But it is a Queſtion with me, if ſuch *French* Coin, exact in Weight, might not as well have been ſuffered to circulate for its full Value of 17 *s.* and one Farthing a-piece, than to proclaim them to paſs not above 17 *s.* which would have ſaved the Government about 9000 *l.* Charges of minting. *Univ. Merch.* P. 92.

already

already backward to give Silver for Gold, and will, in a little Time, refuſe to make Payments in Silver without a Premium, as they do in *Spain*; and this Premium will be an Abatement in the Value of the Gold: And ſo the Queſtion is, whether Gold ſhall be lowered by the Government, or let alone till it falls of itſelf, by the Want of Silver Money?

It may be ſaid, that there are great Quantities of Silver in Plate, and if the Plate were coined, there would be no Want of Silver Money: But I reckon that Silver is ſafer from Exportation in the Form of Plate, than in the Form of Money, becauſe of the greater Value in Silver and Faſhion together; and therefore I am not for coining the Plate, till the Temptation to export the Silver (which is a Profit of 2 *d.* or 3 *d.* an Ounce) be diminiſhed: for as often as Men are neceſſitated to ſend away Money for anſwering Debts abroad, there will be a Temptation to ſend away Silver rather than Gold, becauſe of the Profit, which is almoſt four *per Cent.* And for the ſame Reaſon, Foreigners will chooſe to ſend thither their Gold rather than their Silver.

All which is moſt humbly ſubmitted to your Lordſhips great Wiſdom.

ISAAC NEWTON.

Mint-Office, September 21, 1717.

SECT. IV.

Of the Par of Exchange, and Sir Iſaac Newton's *Method of aſcertaining it; with the Method of keeping Accounts in thoſe Places on which Exchange Negotiations are uſually made.*

1. BY the *Par of Exchange* is meant the preciſe Equality between any Sum or Quantity of *Engliſh* Money, and the Money of a foreign Country, into which it is exchanged, Regard being had to the

Fineneſs as well as to the Weight of each*. *Univ. Mer.* P. 77.

2. When Sir *Iſaac Newton* had the Inſpection of the *Engliſh* Mint, he made, by Order of Council, *Aſſays* of a great Number of foreign Coins, to know their intrinſic Values, and to calculate thereby the Par of Exchange between *England* and other Countries; of which a Table is given by Dr. *Arbuthnot*: And he ſays, you may thereby judge the Balance of Trade, as well as the Diſtemper of a Patient by tne Pulſe. And this, it ſeems, induced Monſ. *Dutot*, in a late Book intitled *Reflexions politiques ſur les Finances*, to follow the ſame Path in calculating the Par of Exchange, and to ſay, that the Balance of Trade may be thereby as well judged of, as the Weather by a Barometer. *Univ. Mer.* P. 45.

* PAIR ſe dit de l'égalité des monnoyes entr'elles, c'eſt à dire, de ce qu'il faut donner d'une ſorte d'eſpece pour y rencontrer juſte la valeur d'une autre. *Savary.*

Sir

Sir ISAAC NEWTON's TABLE *of the Aſſays, Weights and Values of moſt* FOREIGN SILVER *and* GOLD COINS, *actually made at the* MINT, *by Order of the* PRIVY COUNCIL, *before the Year* 1717; *with Notes and Explanations; and a Calculation of the real or intrinſic* PAR *of*

Sir ISAAC NEWTON's TABLE *of the Aſſays, Weights and Values of moſt* FOREIGN SILVER *and* GOLD COINS, *actually made at the* MINT, *by Order of the* PRIVY COUNCIL, *before the Year* 1717; *with Notes and Explanations; and a Calculation of the real or intrinſic* PAR *of* EXCHANGE, *as it ſtood* Anno 1719 *when firſt publiſhed, and ſo as it was republiſhed in* London, 1740.

FOREIGN SILVER COINS.

	Aſſay. dw.	Weight dw. gr.	Stan. Wt. dw. gr. mi.	Value. d.
The *Piaſter* of *Spain*, or *Seville* Piece of 8 Reals, now reduced to 10	*W.* 1	17 12	17 10 2	54
The new *Seville Piece of Eight* - - -	*W.* 1½	14	13 21 15	43 .11
The *Mexico Piece of Eight* - - - -	*W.* 1	17 10	17 8 14	53 .83
The Pillar *Piece of Eight* - - - -	Sta.	17 9	17 9	53 .87
The *Peru Piece of Eight*, coarſer, but of uncertain Allay -				
The old *Ecu* of *France or* Piece of 60 Sols *Tournois* - -	*W.* 1	17 12	17 10 2	54
The new *Ecu*, or Piece of 5 Livres, or 100 Sols - -	*W.* 1½	19 14½	19 11 12	60 .39
N. B. The Ecu *of* France *ſhould be* 2 *dwt. worſe by Law.*				
The *Cruſado* of *Portugal*, or Ducat worth 400 Reas, now marked and raiſed to 480 Reas - - -	*W.* 2	11 4	11 1 13	34 .31
The *Patacks* or *Patagons* of *Portugal*, worth 500 Reas, now marked and raiſed to 600 - - - - -				
The *Ducatoon* of *Flanders*, or Piece of 60 Sols or Patars -	B. 4½	26 22	21 8 2	66 .15
The *Patagoon* of *Flanders*, or *Croſs Dollar*, or Piece of 48 Patars	*W.* 12	18 1	17 1 13	52 .91
The *Ducatoon* of *Holland*, or Piece of 63 Stivers - -	B. 3	20 21	21 3 15	65 .59
The *Patagoon Leg-Dollar*, or *Rix-Dollar* of *Holland*, or Piece of 50 Stivers - - - - - -	*W.* 14	18	16 20 17	52 .28

FOREIGN SILVER COINS.

	Assay.	Weight	Stan. Wt.	Value.
	dw.	dw. gr.	dw. gr. mi.	d.
The three *Guilder* Pieces of *Holland*, or Piece of 60 Stivers -	*W.* 2	20 8	20 3 12	62 .46
The *Guilder*, *Florin*, or Piece of 20 Stivers - -	*W.* 2	6 18½	6 17 1	20 .08
The ten *Schelling* Piece of *Zeland*, or Piece of 60 Stivers -	*W.* 2	20 6	20 1 13	62 .21
The *Lion Dollar* of *Holland*, or ⅔ of the Ducatoon - -	*W.* 44	17 14	14 2 7	43 .07
The *Ducatoon* of *Cologn* - - - -	B. 3	20 18	21 — 15	65 .02
The *Rix-Dollar*, or Patagon of *Cologn* - - -	*W.* 13	18	16 22 14	52 .53
The *Rix-Dollar*, or Patagon of the Biſhop of *Liege* - -	*W.* 12	17 22½	16 22 5	55 .48
The *Rix-Dollar* of *Mentz* - - - -	*W.* 6½	18 8	17 19 18	55 .27
The *Rix-Dollar* of *Francfort* - - - -	*W.* 9	18 8	17 14 4	54 .53
The *Rix-Dollar* of the Elector *Palatine* of the *Rhine* and *Bavaria* before 1620. - - - -		18 5		
The *Rix-Dollar* of *Nuremberg* - - -	*W.* 6	18 10	17 22 1	55 .55
The old *Rix-Dollar* of *Lunenburg* - - -	*W.* 10	18 11	17 15 2	54 .65
The old *Rix-dollar* of *Hanover* - - -	*W.* 8	18 12	17 20 2	55 .03
The *Double Gulden* of the Elector of *Hanover* - - -	*W.* 7	18 18	18 3 16	56 .29
The *Gulden* of the Elector of *Hanover*, or Piece of ½	B. 17½	8 10	9 1 18	28 .14
The half *Gulden* of the Electorate of *Hanover*, or Piece of ¼	B. 17½	4 5	4 12 19	14 .07
The *Gulden* of the Duke of *Zell*, or Piece of 16 Gutz Groſh	*W.* 43	11 2	8 22 10	27 .07
The *Gulden* of the Biſhop of *Hildeſheim*, or Piece of 24 Marien Groſh, now raiſed to 26 - - - -	*W.* 40½	11 22	9 17 17	30 .21
The *Rix-Dollar* of *Magdeburgh* - - - -	*W.* 10	18 12	17 16 1	54 .27
The *Gulden*, or *Guilder* of *Magdeburgh* - - - -	*W.* 44	11 14	9 6	28 .67

The old *Rix-Dollar* of the Elector of *Brandenburgh* - -	*W.* 9	18 13	17 19 1	55 .17
The old *Gulden* of *Brandenburgh*, now raiſed from 24 to 26 Marien				

The Gulden, or Guilder of *Magdeburgh*	*W.* 44	11 14	9 6	28	.67
The old *Rix-Dollar* of the Elector of *Brandenburgh*	*W.* 9	18 13	17 19 1	55	.17
The old *Gulden* of *Brandenburgh*, now raised from 24 to 26 Marien Grosh	*W.* 43	12 4	9 19 9	30	.41
The *Gulden* of *Brandenburgh*, or Piece of $\frac{2}{3}$	*W.* 43	11 3	8 23 6	27	.81
The half *Gulden* of *Brandenburgh*, or Piece of $\frac{1}{3}$	*W.* 43	5 13	4 11 14	13	.09
The *Gulden* of the Elector of *Saxony*, or Piece of $\frac{2}{3}$	*W.* 41	11 3	9 1 14	28	.12
The old Bank *Dollar* of *Hamburgh*	*W.* 8	18 9	17 17 4	54	.92
The old *Rix-Dollar* of *Lubec*	*W.* $8\frac{1}{2}$	18 16	17 22 17	55	.54
The four Mark Piece of *Denmark*, of coarser Allay	*W.* 61	14 8	10 9 10	32	.23
The four Mark Piece of *Denmark*, of finer Allay	*W.* 21	11 $13\frac{1}{2}$	10 11 5	32	.45
The eight Mark Piece of *Sweden*	Stan.	20	20	62	
The four Mark Piece of *Sweden*	*W.* 58	13 12	9 23 7	30	.92
The two Mark Piece of *Sweden*	*W.*	6 19			
The old *Dollar* of *Dantzick*	*W.* $10\frac{1}{2}$	18 9	17 12 14	54	.27
The old *Rix-Dollar* of *Thorn* near *Dantzick*	*W.* 12	18 $8\frac{1}{2}$	17 8 15	53	.85
The *Rix-Dollars* of *Sigismund* III. and *Vladislaus* IV. Kings of *Poland*	*W.* 10	18 9	17 13 14	54	.04
The *Rix-Dollar* of the late Emperor *Leopold*	*W.* $10\frac{1}{2}$	18 9	17 12 4	54	.27
The *Rix-Dollar* of his Predecessor *Ferdinand* III.	*W.* $10\frac{1}{2}$	18 9	17 12 4	54	.27
The *Rix-Dollar* of *Ferdinand* Archduke of *Austria*	*W.* $10\frac{1}{2}$	18 5	17 8 7	53	.78
The *Rix-Dollar* of *Basil*	*W.* $7\frac{1}{2}$	18 $18\frac{1}{2}$	18 3 6	56	.24
The *Rix-Dollar* of *Zune*	*W.* 13	18 1	16 23 13	52	.65
The old *Ducat* of *Venice* with the Words *Ducatus Venetus* upon it; a Piece of six old Livres, afterwards raised, I think, to 6 Livres 4 Sols *de Picoli*	*W.* $23\frac{1}{2}$	14 15	13 1 17	40	.50

FOREIGN SILVER COINS.

	Assay.	Weight		Stan. Wt.			Value.	
	dw.	dw.	gr.	dw.	gr.	mi.	d.	
The *half Ducat* - - - -	*W.* 23½	7	7½	6	12	18	20	.25
The *new Ducat*, with the N° 124 upon it, ſignifying 124 Sols, or 6 Livres 4 Sols *de Picoli* - - -		18	2					
The half thereof - - - -		9	1					
The *Cruſado Croiſat*, or *St. Mark* of *Venice*, with the N° 140 upon it, ſignifying 140 Sols, or 7 Livres *de Picoli* - -		20	6					
The half Cruſado of the ſame Form - - -		10	3					
The quarter *Cruſado* of the ſame Form - -		5	1					
Another Coin of *Venice* - - -	*W.* 46	17	10	13	19	8	42	.08
The Piece of two Jewels - - - -	B. 6	3	15	3	17	7	11	.05
The *Ducat de Banco* of *Naples*, or Piece of 5 Tarins, or 10 Carlins, or 100 Grains - - - -	*W.* 3	14	0¼	13	1		40	.43
The half *Ducat* - - - -	*W.* 3	7	0⅛	6	12	10	20	.21
The *Tarin*, or fifth Part of the Ducat - - -	*W.* 3	2	19¼	2	14	12	8	.09
The *Carlin*, or tenth Part of the Ducat - - -	*W.* 3	1	9½	1	7	6	4	.04
The *Eſcudi Eſcu*, or Crown of *Rome*, or Piece of 10 Julios, or 100 Bayoches - - - - - -		20	14½					
The *Teſton* of *Rome*, or Piece of 3 Julios - -	*W.* 1	5	21½	5	20	17	18	.32
The *Ducat* of *Florence* and *Leghorn*, or Piece of 7 Livres, or 10½ Julios	B. 8	20	3	20	20	6	64	.62
The Julio of *Rome* - - - -		2	5					
The *Piaſter Ecu*, or Crown of *Ferdinand* II. Duke of *Tuſcany*	*W.* 1	17	12	17	10	2	54	
The *Piaſter*, *Ecu*, or *Crown* of *Coſmus* III. preſent Duke of *Tuſcany*, whoſe Monies are about 4 *per cent.* lighter than thoſe of his	*W.* 1	16	18	16	16	4	51	.69

The *Piaſter*, *Ecu*, or *Crown* of *Coſmus* III. preſent Duke of *Tuſcany*, whoſe Monies are about 4 *per cent.* lighter than thoſe of his Father; this Piece is $8\frac{1}{2}$ Julios	*W.*	1	16	18	16	16	4	51 .69
The *Croiſat* of *Genoa*, or Piece of $7\frac{1}{2}$ Livres	B.	7	24	15	25	9	11	78 .74
The *Ecu d'Argent* of *Genoa*, or Piece of 7 Livres 12 Sols			17	21				
The *Piaſter Ecu*, or Crown of *Milan*			20	20				
The *Philip* of *Milan*, a Piece of 7 Livres			3	22				
The *Livre*, or 20 Sols Piece of *Savoy*			1	23				
The 10 Sols Piece of *Savoy*	B.	$16\frac{1}{2}$	7	13	7	23	4	24 .07
A *Rupee*	*W.*	75	12	19	8	11	5	26 .26
A *Gout Gulden*, or *Florin d'Or*, a *Dutch* Coin of 28 Stivers	*W.*	48	11	0	8	14	18	26 .72
Another *Gout Gulden*	*W.*	48	12	0	9	9	15	29 .15
Another								

GOLD COINS Unworn.

	car.	gr.	dw.	gr.	dr.	gr.	mi.	*s.*	*d.*
THE old *Louis d'Or*	*W.* 0	$0\frac{1}{2}$	4	8	4	7	8	16	9.3
The half and quarter in Proportion	*W.* 0	$0\frac{1}{2}$	2	4	2	3	14	8	5
The new *Louis d'Or*	*W.* 0	$1\frac{1}{2}$	5	$5\frac{2}{5}$	5	3	18	20	0.6
The half and quarter in Proportion	*W.* 0	$1\frac{1}{2}$	2	$14\frac{7}{10}$	2	13	19	10	0.3
The old *Spaniſh* double *Doubloon*	*W.* 0	$0\frac{1}{2}$	17	8	17	5	12	67	1.4
The old *Spaniſh* double *Piſtole*	*W.* 0	$0\frac{1}{2}$	8	16	8	14	16	33	6.7
The old *Spaniſh Piſtole*	*W.* 0	$0\frac{1}{2}$	4	8	4	7	8	16	9.3
The new *Seville* double *Piſtole*	*W.* 0	3	8	$16\frac{1}{3}$					

GOLD COINS Unworn.

	Assay. car. gr.	Weight dw. gr.	Stan. Wt. dw. gr. mi.	Value. s. d.
The new *Seville Piſtole*		4 18 1/6		
The half and quarter in Proportion				
The *Doppia Moeda* or double *Moeda* of *Portugal* new coined	*W.* 0 0 1/4	6 22	6 21 12	26 10 .4
The *Doppia Moeda* as they come into *England*	*W.* 0 0 1/4	6 21 3/4	6 21 7	26 9 .9
The *Moeda* of *Portugal*	*W.* 0 0 1/4	3 11	3 10 16	13 5 .1
The half *Moeda*	*W.* 0 0 1/4	1 17 1/2	1 17 8	6 8 .5
The *Hungary Ducat*	B. 1 2	2 5 2/3	2 9 7	9 3 .6
The *Ducat* of *Holland* coined *ad Legem Imperii*	B. 1 2	2 5 1/2	2 9 3	9 3 .2
The *Ducat* of *Campen* in *Holland*	B. 1 2	2 5 1/2	2 9 3	9 3 .2
The *Ducat* of the Biſhop of *Bemberg*	B. 1 2	2 5 1/2	2 9 3	9 3 .2
The double *Ducat* of the Duke of *Hanover*	B. 1 2	4 10 1/2	4 17 9	18 4 .8
The *Ducat* of the Duke of *Hanover*	B. 1 2	2 5 1/4	2 8 10	9 2 .7
The *Ducat* of *Brandenburg*	B. 1 2	2 5 1/2	2 9 3	9 3 .2
The *Ducat* of *Sweden*	B. 1 2	2 5 1/2	2 9 3	9 3 .2
The *Ducat* of *Denmark*	B. 1 2	2 5 1/2	2 9 3	9 3 .2
The *Ducat* of *Poland*	B. 1 2	2 5	2 8 12	9 2 .1
The *Ducat* of *Tranſylvania*	B. 1 1 1/2	2 4 3/4	2 7 6	8 11 .6
The *Sequin*, *Chequin*, or *Zacheen* of *Venice*	B. 1 3 1/2	2 5 3/4	2 10 7	9 5 .7
The old *Italian Piſtole*	*W.* 0 0 1/4	4 6 3/4	4 6 11	16 7 .6
The double *Piſtole* of Pope *Urban*, 1634,		8 14 1/2		
The half *Piſtole* of *Innocent* II. 1685,		2 4		
A double *Piſtole* of *Placentia*		8 10		
A double *Piſtole* of *Genoa*, 1621,		18 16		

A double *Piſtole* of *Genoa*, 1621,		8 16			
A double *Piſtole* of *Milan*		8 13½			
A ſingle *Piſtole* of *Milan*		4 6¾			
A *Piſtole* of *Savoy*, 1665,		4 8½			
Double *Ducats* of *Caſtile*, *Genoa*, *Portugal*, *Florence*, *Hungary* and *Venice*	B. 1 2½	4 11	4 18 18	18 7	.7
Single *Ducats* of the ſame Places	B. 1 2½	2 5½	2 9 9	9 3	.8
Double *Ducats* of the ſeveral Forms in *Germany*	B. 1 1	4 11	4 17 1	18 4	
Single *Ducats* of the ſame Places	B. 1 1	2 5½	2 8 5½	9 2	
Double *Ducats* of *Genca*	B. 1 2	4 11	4 18 6	18 6	.5
Single *Ducats* of *Genoa*, *Beſançon*, and *Zurich*	B. 1 2	2 5½	2 9 3	9 3	.2
Piſtole of *Rome*, *Milan*, *Venice*, *Florence*, *Savoy*, *Genoa*, *Orange*, *Trevon*, *Beſançon*	*W.* 0 0¼	6 6	4 5 17	16 6	.7
A *Barbary Ducat*, with *Arabic* Letters on both Sides in Square Tablets without any Effigies or Eſcutcheon	*W.* 2 1¼	2 16¼	2 9 6	9 3	.5

N. B. The Gold Coin having been valued when Guineas were at 21*s.* 6*d.* they are here reduced to the preſent Standard of 21*s.*

For underſtanding this Table, it is to be obſerved, that the *Engliſh* Pound Troy contains 12 Ounces; one Ounce, twenty Pennyweights; one Pennyweight, 24 Grains; and one Grain, twenty Mites.

The preſent *Engliſh* Standard for Gold Coin is 22 Carats of fine Gold, and two Carats, or $\frac{1}{11}$ of Alloy.

The

The Silver Coin contains eleven Ounces two Pennyweight fine Silver, and eighteen Pennyweight of Alloy in the Pound.

The firſt Column of the Table expreſſeth the Fineneſs of the aſſayed Piece; the Letter B. ſignifying *better*, and W. *worſe* than the *Engliſh* Standard.

The ſecond Column, the abſolute Weight of the Piece.

The third Column, its Standard Weight, or its Quantity of Standard Metal.

The fourth Column, its Value in *Engliſh* Money.

For Example, in the ſecond Article of Silver Coin, the new *Sevile Piece of Eight* is 1½ Pennyweight in the Pound worſe than the *Engliſh* Standard Weight; 13 Pennyweight 21 Grains and 15 Mites of Sterling Silver; and is in Value 43 *d.* .11 Parts of a Penny*.

In the Royal Mint, a Pound of Standard Gold is cut or divided into 44½ Parts, each a Guinea, at which Rate a Guinea will weigh 5 Pennyweight 9 Grains .4382 Parts.

They were firſt coined in King *Charles* II. Reign, and went for 20 *s.* and had their Name from the Gold, whereof they were made; being brought from that Part of *Africa* called *Guinea*, which the Elephant on them likewiſe denotes. *Univ. Merch.* P. 76, 77.

4. In *Holland*, or the Seven United Provinces, Accounts are kept in Guilders, Stivers, and Pennings; one Guilder being equal to twenty Stivers, and one Stiver to ſixteen Pennings, or two Groots, or Groſs: Six of their Guilders they reckon equal to one Pound, or twenty Shillings *Flemiſh*; on which laſt, the Exchange betwixt *London* and thoſe Countries is always computed, and not on the Guilder, though they are, by the above Account of the ſeve-

* 11 oz. 2 dwts. is 222 dwts. from which deducting 1½, there remains 220½; and therefore if 222 makes 220½; then 14 (the Weight of the *Seville Pieces of Eight* in the Table) will make 13 dwts. 21 gr. 15 mi. (in the Standard Weight in the Table) which at 62 *d.* for 20 dwts. (an Ounce Sterling) is 43$\frac{11}{160}$, the Value in the Table.

ral Denominations, eaſily reduced one into the other. The real Species are the Rix-Dollar, valued at fifty Stivers; and the Ducatoon, equal to ſixty-three Stivers. But though this be the current Value of that Piece, it is received at the Bank of *Amſterdam* only at ſixty Stivers, which makes the Difference, called *Agio*, really of five *per Cent.* between Bank and current Money.

The Par of Exchange between *Engliſh* and *Dutch* Money is eaſily found thus: As by Sir *Iſaac Newton*'s Table (P. 419.) the Ducatoon of *Holland* is worth intrinſically 65 *d.* .59 *Engliſh*, which is received at the Bank, as hath been already ſaid, at ſixty Stivers, or three Guilders, and conſequently is equal to ten Schillings *Flemiſh*; therefore by the Rule of Three, as 65 *d.* .59 *Engliſh* is to 10 *s. Flemiſh*, ſo is 240 *d. Engliſh* to a fourth Number, which will be found to be 36 *s.* .49 *Flemiſh*; and ſo much Bank Money at *Amſterdam* ſhould be received for one Pound, or 240 Pence Sterling: This is the real *Par*, and whatever is received more or leſs than this, is Gain or Loſs to *England*.

In this and the following Calculations of the *Par*, Regard is had only to the *coined* Silver of the ſeveral Countries, and not to the accidental Price or Value that Silver in Bullion may be; for this never is long the ſame. *Univ. Merch.* P. 78.

5. In *Flanders*, or the ten Provinces, Accounts are kept either as in *Holland*, or in Pounds, Schillings, and Pence *Flemiſh*; one Pound *Flemiſh* being equal to twenty Schillings, and one Schilling equal to twelve Pence; the Rix-Dollar here is only forty-eight Stivers. In reducing the Money of this Country into that of *Holland*, it muſt be obſerved, that one Pound *Flemiſh*, as it is called, is equal to ſix Guilders; and of Conſequence, one Schilling *Flemiſh* is equal to ſix Stivers, or twelve Groſs; one Stiver being equal to two Groſs.

Antwerp having been formerly the chief City of Trade of the whole ſeventeen Provinces, we exchange even

even upon *Holland* to this Day in *Flemiſh* Money. In ſome Parts of *Flanders* they divide the Shilling into Patars inſtead of Pence, ſix whereof go to a Shilling. The Par at *Antwerp* is the ſame as at *Hamburg*, which ſee in the following Paragraph.

6. In *Hamburgh* Accounts are kept in Marks Lubs, Schilling-Lubs and Phennings, Pence, or Deniers; or in Pounds, Shillings and Pence *Flemiſh*.

12 Phennings	make	A Schilling-Lub.
13 Schilling-Lubs		A Mark.
2 Marks		A Dollar.
3 Marks or 48 Schilling-Lubs		A Rix-dollar.
6 Schilling-Lubs		1 Schilling *Flemiſh*.
6 Phennings		1 Groot *Flemiſh*.
$7\frac{1}{2}$ Marks		1 Pound *Flemiſh*.
8 *Flemiſh* Schillings		1 Rix-dollar.

But there is a Difference between Bank-money and *Hamburgh* Currency; Bank-money being 16 *per Cent.* better. In Exchange for *London*, they give ſo many Shillings and Groot *Flemiſh* for one Pound Sterling.

The old Dollar of *Hamburgh* Money (the Rix-dollar above mentioned) ſtands in the Table (P. 421) valued at * 54 *d.* .92; therefore to find the Par of Exchange, ſay, as 54*d.* .92 is to 8 *Flemiſh* Schillings or one Rix-dollar; ſo is 240 *d.* to a fourth Number, which will be found to be 34 *s.* 11 *d.* but in the Book lately publiſhed, called *the Britiſh Negotiator*, the Par is ſaid to be 35 *s.* $6\frac{2}{3}$ *d.* and in *Caſtaign*'s Paper hereafter mentioned, it is ſaid to be 35 *s.* .17

7. In *France*, Accounts are kept in Livers, Sols, and Deniers; one Livre is equal to twenty Sols, and one Sol is 12 Deniers.

* At *Hamburgh* the Bank Dollar muſt weigh exactly two Loot, or an Ounce, which correſponds with eighteen Pennyweight eighteen Grains *London* Weight: Whence it is evident, that the ſaid Dollar, by which the Par of this Table has been calculated, muſt have been under Weight. *Univ. Merch.* P. 47.

In

In exchanging with that Country, we pay ſo many Pence Sterling for their Crown, by which Crown is always meant three Livres or ſixty Sols, though they have not always any coined Piece of Silver preciſely of the Value of three Livres; therefore this ideal or nominal Crown is to be diſtinguiſhed from the coined or real Piece of Silver, which paſſes likewiſe under the Name of a *Crown* or *Ecu*, but for Diſtinction-ſake is called *un Ecu d'Argent*, or *Ecu blanc*, or *a Crown of ſo many Livres*; for this Crown in Specie may be double that of Account or Exchange, as it really happens to be at this Time; and conſequently the Crown in Exchange is paid in *France* by the half of that real or ſpecie Crown.

The Exchange between *France* and other Countries varies more than any other, owing to the frequent Alteration of their Coin, which is done by the King's Arret, wherein he declares and orders, how many Crowns in Specie, or Livres, Sols and Deniers are to be coined at his Mint out of the Mark, as they call it, or eight of their Ounces of Silver; but this Mark is only 7 *oz.* 17 *dwt.* 12 *gr. Engliſh* Weight; which at 5*s.* 2*d. per* Ounce, is worth only 2 *l.* 8¼*d.* Sterling. By the laſt Arret in *France*, 15 *June* 1726, the King orders, that there ſhould be coined out of the Mark 8⅜ Crowns, each Crown to paſs for ſix Livres, that is, the Mark, when coined, to paſs for fifty Livres five Sols; from whence we have this Equation, that fifty Livres five Sols *French* are intrinſically worth or equal to 2 *l.* 8¼*d.* from thence may be had the Par of Exchange on the Crown or three Livres *French*; for if fifty Livres five Sols be equal to 2 *l.* 8¼ *d. Engliſh*, three Livres *French* muſt be equal to 29.149*d. Engliſh*, and whatever is paid more or leſs than this is Loſs or Gain; and conſequently, as the Courſe of Exchange then was, by the Account ſubjoined from *Caſtaign*'s Paper, *France* had the Advantage of about ten *per Cent.* This ſhews their Ignorance who, in Books printed on this Subject, pretend to note the *Par of Exchange* with *France*, as if their Coin remain-

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ed always the ſame; whereas there is no other Way than by an actual Aſſay, and weighing their Species at the Time, or ſeeing the King's Arret; and indeed that Exchange is ſo variable, that I have known it within the Space of but a few Years, from 5 *d. Engliſh* to near 60 *d.* for their Crown of three Livres; the firſt indeed was payable in their Bank Notes, then in great Diſcredit, *viz. Ann.* 1720. *Univ. Merch.* 80, 81.

8. In *Madrid*, *Cadiz*, *Seville*, and all *Spain*, Accounts are kept in Maravedies, 34 of which make a Rial, and 272 are equal to a Piaſter, or Piece of $\frac{8}{8}$ Rials new Plate, or ten of Vellon. The Piſtole of Gold is equal to four Pieces of $\frac{8}{8}$. A Rial of Plate is worth 34 Maravedies of Plate, as a Rial of Vellon is worth 34 Maravedies of Vellon; ſo that thoſe two Terms of Plate and Vellon in *Spain*, not only ſignify the different Metals of Silver and Copper, but the Difference in Accounts of Money, for the Piece of $\frac{8}{8}$, which makes only 272 Maravedies of Plate, is equal to 510 Maravedies of Vellon; ſo they ſay a *Rial of Plate*, or a *Rial of Vellon*; a *Maravedies of Plate*, or a *Maravedies of Vellon*; though the laſt is only a ſmall Copper Coin.

The Dollar or Piaſter, which formerly went for eight Rials, is now raiſed to ten; ſo that *London* exchanging upon the Piece of Eight Rials on that Country ſtill as formerly, the Alteration in the Courſe of Exchange ſhould be in Proportion thus: If ten Rials of Plate, or a Dollar, be worth 54 *d.* Sterling (the Value of the Piaſter in the Table, P. 419.) what is eight Rials worth? Anſwer, 43.2 *d.*

In the Table ſtands firſt a Piaſter of *Seville*, weighing 17 Pennyweight 12 Grains; whereupon the Par of Exchange is calculated. Then 1000 Piaſters in *London* ſhould weigh 875 Ounces: But it is notorious that 1000 Piaſters in *Spain* go at 117 Marks 2 Ounces, and in *London* ſeldom turn out above 867 to 869 Ounces. The exact Weight of a Piaſter in *Spain*, at preſent, is 15 *Adarmes*, and ſo 1000 weighing 117 Marks

Marks $1\frac{1}{2}$ Ounce, will paſs for full Weight in their Payments; whereby it ſeems to be clear, that the Piaſter which Sir *Iſaac Newton* made uſe of, and calculated the Par by, has been over-weighty.

Or if it was a Piaſter of an older Date, when out of a Mark of eight Ounces, eleven Pennyweight, four Grains, were coined ſixty-ſeven Rials, and eight made a Piaſter, then 1000 Piaſters, full Weight, correſpond to $119\frac{27}{67}$ Marks at *Cadiz:* And ſo as $117\frac{1}{4}$ Marks at *Cadiz* make $867\frac{1}{2}$ Ounces at *London*, 1000 Piaſters, or 17,350 Pennyweight, $119\frac{27}{67}$ Marks correſpond to 17 Pennyweight 16 Grains a Piaſter, and then it was too light. *Univ. Mer.* P. 81, 46.

9. At *Leghorn* they keep their Accounts in Livres, Sols and Deniers, or in Crowns of Gold, which is divided into 20 Solds, each Sold into 12 Deniers. A Crown of Gold, which they mark thus ϵ, is divided otherwiſe into $7\frac{1}{2}$ Liras.

They exchange upon the Dollar, or Piece of Eight, the Par of which with *England* is 54*d.* A Dollar or Piaſter of Exchange is equal to ſix Liras or Livres; a Ducat makes ſeven Liras.

10. At *Genoa* they keep their Accounts in Livres, Sols, and Deniers, as at *Leghorn.* They exchange upon the Piaſter or Dollar of five Livres; the Par of which is 54 *d.* Sterling.

11. At *Venice* they keep their Accounts in *Liras*, Soldi, and Picoli or Livres, Sols and Deniers current, and reckon 12 Deniers to the Sol, and 20 Sols to a Livre. But in the Bank, or the Bankers, keep their Accounts in Livres, Sols, and Groſſes, reckoning 12 Groſs to a Sol, and 20 Sols to a Livre; and every Livre they value at 10 Ducats Banco or 12 Ducats current.

So that they have two Sorts of Ducats, one *Banque*, and the other *Courant*, the latter 20 *per Cent.* worſe, or as the *Agio* rules, than thoſe called Bank Ducats; each of them is divided into 124 Soldi, or 24 Groſs, or ſix Liras 4 Sols.

A Sequin

A Sequin being equal to 17 Liras, and worth, by Sir *Iſaac*'s Table (P. 424) 9*s*. 5.7*d*. Sterling: Say, if 17 Liras give 9*s*. 5.7*d*. what will 7 Liras 8 Soldi (a Ducat of Bank) give? Anſwer, 49.492 *d*.

12. In *Liſbon* Accounts are kept in Reas, accounting 1000 Reas to what they call a Millrea, and ſeparating the Millrea from the Reas thus: 976 ℧ 859, which ſignifies 976 Millreas, and 859 Reas.

The Millrea is no real Coin but Money of Account. A Cruſado of Silver is 480 Reas. But as moſt Payments are made in Gold, and few or none in Silver, the Moeda being worth only 26*s*. 10.4*d*. (ſee the Table, P. 424.) the Rule to find the Par will be as follows: If 4800 Reas (for ſo many are in a Moeda) give 26*s*. 10.4*d*. what will 1000, or one Millrea give? Anſwer, 5*s*. 7.166 *d*. which is near 2 *per Cent*. in our Favour.

13. The following Table needs no Explanation to Merchants; but others are to be informed, that it is a Copy of a Paper uſually printed twice a Week by an eminent Exchange Broker, or by one who was daily informed by the ſeveral Dealers in Exchange, of the current Pieces of the Monies of the ſeveral Countries we deal with that way, and is looked upon to be very exact.

There are different Ways among Merchants of negotiating Bills of Exchange, according to the Cuſtom of the Countries abroad on which they are drawn; for Example, if a Bill be demanded on *Amſterdam*, *Rotterdam*, *Antwerp*, or any other of the ſeventeen Provinces, or on *Hamburgh*, the Negotiation is always meant to be on the Pound Sterling; and then the Queſtion or Bargain to be made is, how many Schillings and Pence *Flemiſh* are to be received in thoſe Parts for each Pound *Sterling*; and as this varies according to the Demand, and one receives ſometimes more, ſometimes leſs, it is termed by ſome Writers on this Subject of Exchange, *giving the certain for the uncertain*, though not ſo properly. On other Countries it is the Reverſe of this, for a Piece of a certain

Value or Denomination is ſtipulated to be delivered abroad, and the Agreement to be made is, how much *Engliſh* Money is to be paid here for that Piece of foreign Coin. Thus we exchange with *France* on their Crown or three Livres *Tournois*; with *Spain* on their Piece of Eight; with *Portugal* on their Millrea, *&c.* as may be ſeen in the Table ſubjoined.

It is to be obſerved, that the Value or Prices of *Engliſh* Money towards the right and left Hands, are the Rates at which Bills were actually negotiated on the Exchange of *London* on the Days mentioned at Top; and that the Middle Column is the Par, or intrinſick Value, by which may be known at any Time which has the Advantage, this or the Country we exchange with.

Courſe of Exchange by *Caſtaign*'s Paper, 28 *March* 1729, calculated upon Silver at 5 *s.* 2 *d.*		*Flemiſh s.*	*Par.*	Courſe of Exchange, *May* 24, 1759. *s. d.*
Amſterdam	for 1 *l.* St.	34.6	36.59	35 7 Uſ. / 35 3 at Sight.
Rotterdam	for 1 *l.* St.	34.7	36.59	35 8
Antwerp	for 1 *l.* St.	35.3	35 17	No Price.
Hamburgh	for 1 *l.* St.	33.7	35.17	37 9
		Engliſh d.		*d.*
Madrid for a Piece of Eight		43.5	43.2	39¼
Genoa for a Dollar	——	54 75	54. —	47⅝
Leghorn for a Dollar	——	54 —	54. —	48½ a 5-8ths.
Venice for a Ducat of Bank		48.625	49.492	49½ a 5-8ths.
Paris for a Crown of 3 Livres		32.5	29.139	30½ 1 Day's Date. / 30½ 2 Uſance.
Liſbon for a Millrea	—	66.—	67.167	5½

SECT. V.

Of the Bank of Amſterdam *and* Rotterdam, *and Method of calculating the* Dutch *Exchanges.*

THE Bank of *Amſterdam*, ſuppoſed the moſt conſiderable and richeſt in *Europe*, on the 31ſt of *January* 1609, was eſtabliſhed by the Authority of the States General, under the Direction of the Burgomaſters of this City, who are Security for the ſame, and conſtituted themſelves perpetual Caſhiers of its Inhabitants, to whom it is of the greateſt Conveniency and Service, as Millions may be paid in a Day by the ſimple Aſſignations of a Draught on it, without the Intervention of any real Caſh.

The Funds of this Bank are related to be ſo great as is hardly credible, many Authors quoting their Value to be at leaſt that of three thouſand Tuns of Gold; and theſe, rated at 100,000 Guilders *per* Tun, make at only 35 Shillings *per* Pound Sterling, the prodigious Sum of 28,571,406 *l.* * but as this Value is unaſcer-

* The Bank of *Amſterdam* has the Fame of more Treaſure than any other. The *French* Author of the Eſſay on Commerce ſays its Capital is 400,000,000 of Guilders; and the *Amſterdam* Edition of that Book is noted in the Margin 8 or 900,000,000, which amounts to 80,000,000 Sterling. *Davenant* ſeems aſſured that it is 36,000,000 Sterling effectual Money Gold and Silver in Bank, and that their Tranſactions are not with Money, but by Aſſignments. But as ſuch Aſſignments cannot be made out, but with or by the Intervention of thoſe that keep Accounts with the Bank, if then we can make a ſhrewd Gueſs at their Number, it may be nearly concluded what the Sum amounts to: as it is not to be preſumed that any Money can be in the Bank but what ſome Body muſt ſtand Creditor for. Now it is known, that though *Amſterdam* has, in Proportion to its Inhabitants, more Merchants than *London*, yet as *London* contains four to one more People than *Amſterdam*, there are more Merchants and Men of Buſineſs who keep Accounts with the Bank. The utmoſt which appear in the *London* Directory are 2800, and moſt probably at *Amſterdam* not half ſo many: And though many have Accounts in the Bank who are not reſident at *Amſterdam*, it is the ſame in Reſpect to *London*; and

unaſcertained, I ſhall give Sir *William Temple*'s Opinion of it, inſtead of my own, who ſpeaking of this Bank, in his Remarks on the State of the *United Provinces*, ſays: "In the City of *Amſterdam* is the Bank, "ſo celebrated in all the World on Account of the "Greatneſs of its Treaſure, which exceeds that of all "others hitherto known, real or imaginary. The "Place where it is lodged is a great Vault under the "Town-houſe, provided with Doors, Locks, and "every other Security neceſſary for its Safety and "Preſervation: And it is certain, that whenever "any one goes to ſee the Bank, he will find there a "very great Treaſure in Bars and Ingots of Silver, "Plate, and an incredible Quantity of Sacks full of "Metal ſaid to be Gold and Silver, as, I believe, "in Effect they are; though, as there is none but "the Burgo-maſters who have any Direction in this "Bank, and as there is no one who keeps any Ac-"count of what is brought in or carried out at dif-"ferent Times, it is impoſſible to know, or even "gueſs, with any Exactneſs, the Proportion there is "between the real and imaginary Treaſure of it, as "it does not ſolely conſiſt in the effective Gold and "Silver, but alſo in the Credit of the City, and of "the State, of which the Funds and Revenues are as "great as that of ſome Kingdoms, and it is obliged "to be anſwerable for all the Money brought in. "The greateſt Payments made between the Mer-"chants of this City are in Bank-bills; ſo that it "may be ſaid, that this Bank is properly the general "Cheſt in which every one incloſes his Money, be-"cauſe they deem it there to lie in greater Security, "both for paying and receiving, than if they had it "in their own Coffers; and the Bank is ſo far from "being obliged to pay an Intereſt on the Money de-"poſited in it, that what is there is worth more than

and if it was even admitted that there were in *Amſterdam* 3000, and each of theſe to have on Advance 10,000 Guilders, the Amount is 30,000,000 of Guilders; and, if 20,000, 60,000,000. *Univ. Merch.* P. 32.

" the current Money, in which ſmall Payments are
" handily made, becauſe it neither admits nor re-
" ceives any Caſh, but of the beſt and moſt valuable
" Species, and thoſe that are moſt current as well in
" *Germany* as in the *Low Countries*."

By its Eſtabliſhment it is ordained, that the Payments of Bills of Exchange and wholeſale Goods ſhall be only in Bank, except the Sum be under 300 Guilders, and nothing leſs than this can be wrote into Bank, without paying ſix Stivers (except it be by the *Eaſt* and *Weſt India* Companies, who are exempt from this Duty, and may write in what ſmall Sums they pleaſe); ſo that the Debtor is obliged to carry his Money in there, and the Creditor from thence to receive it.

The Payments are made by a ſimple Transfer, or Aſſignation of one to the other; ſo that he that was Creditor on the Bank Books before, becomes Debtor from the Moment he has aſſigned any Sum to another, who is wrote down as Creditor in his Room.

Although the Bank of *Amſterdam* has no Account of current Caſh open like that of *Venice*, this does not hinder (notwithſtanding its Regulation) but that it ſometimes makes Payments in ready Money; and there are particular Caſhiers without the Bank who make theſe Payments for an Eighth *per cent.* that is to ſay, two Stivers and a half for a hundred Guilders.

This Contravention is tolerated as beneficial to Trade, foraſmuch as ſometimes one is obliged to make a Payment in effective Money, more eſpecially in retail Affairs; and it is often that ſome Perſons are better pleaſed to have their Caſh ready for Uſe elſewhere than in the publick Bank, either for Negotiations, or to pay Bills of Exchange, when their expreſs Tenor is to be paid out of the Bank, that is, in ready or current Money.

It is by this Bank, that the City of *Amſterdam* is ſupported in ſo much Splendor and Magnificence, and, without interrupting Commerce, poſſeſſes the greateſt Part of the Caſh of its Inhabitants, who are

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not leſs rich for having their Fortunes in the Bank, as they may convert them into ready Money whenever they pleaſe, and again bring them into Bank when it ſhall be agreeable.

And to carry on this Sort of Buſineſs or Exchange, an Application need only be made to certain Merchants, or particular Caſhiers, who are commonly to be met with between Ten and Eleven o'clock at the *Dam*, or before the Town houſe or Bank, with whom the Negotiation may be adjuſted for an Agio or Diſcount, which they endeavour to effect on the higheſt Terms when they are Sellers, and on the loweſt they poſſibly can when they buy.

The Difference between buying and ſelling is ordinarily from a Sixteenth to an Eighth *per cent.* and the *Agio* varies from three to ſix *per cent.* ſometimes more, at other Times leſs, according to the Difference in Exchange, or the Scarceneſs of the Specie.

When a Payment is made in *Ducatoons* or *Rix-Dollars*, and not in a ſmall Kind of Money, leſs is given for the Agio, becauſe the large Coins are received at the Bank.

Theſe Sorts of Negotiations are likewiſe made at the *Bourſe*, or at Home between Merchant and Merchant, with or without the Intervention of Brokers, who have one *per Mil.* for their Pains, paid equally between the Buyer and Seller.

To have an Account opened for a Perſon in the Bank, he muſt pay 10 Guilders for once only.

The Bank only receives Ducats of Gold, Ducatoons, Rix-Dollars, old Louis d'ors, and other ſuch like Species: and they have reduced the Ducatoon to 60 Stivers inſtead of 63, as they paſſed in ready or current Money, the Rix-Dollar to be 48 from 50, and other Sorts of Coins in Proportion.

The Bank never engages for the Species it receives, but on the Footing of 5 *per cent.* under their common Value in current Money, *viz.* the Ducatoon at the Value juſt now mentioned, which is the true Ori-

ginal of the Agio, and which conſequently muſt be *5 per cent.*

Ingots of Gold and Bars of Silver are likewiſe depoſited there, of which the Price is regulated according to their Value after the Aſſay which is made by the City Aſſayer; and all Sorts of Species of Gold and Silver are alſo depoſited, and principally Dollars, for which the Bank gives its Receipts called *Receipts of Mexican Dollars*, and which are commonly negotiated at Change.

Thoſe who have Caſh in Bank may draw it out whenever they pleaſe on paying a ſixteenth *per cent.* for the Care of it; and if at the Time of taking it out, the Agio ſhould be under 5 *per cent.* the Treaſurer will pay the Difference, foraſmuch as that when it was received, there was charged on it the five *per cent.*

The Books of the Bank are kept in Guilders, Stivers, and Pennings; of which 20 Stivers make a Guilder, and ſixteen Pennings or Deniers, a Stiver.

Any one drawing on the Bank more than he has there, incurs a Penalty of 3 *per cent.* on the Sum he overdraws.

The Bank is ſhut up twice a-year, *viz.* in *January* or *February*, and in *July* or *Auguſt*, and remains ſo eight, ten, or fifteen Days, during which Time the Books are balancing.

It is ſhut up beſides, on the Feaſts of *Eaſter*, the *Aſcenſion*, and *Chriſtmas*, and on Faſt Days, and about the 22d of *September*, when the Fair begins.

If the ſix Days of Grace, which are allowed on Bills of Exchange, happen to expire whilſt the Bank is ſhut, the Bearer of them is in Time to proteſt them, in caſe of Non-payment, the ſecond or third Day after its Opening.

Whenever any Difference happens between Merchants and Tradeſmen about the Bank, it ſhall be ſummarily ſettled by the Commiſſioners named for this Purpoſe by the Magiſtracy of *Amſterdam*.

The Bank makes no negotiable Bills, but gives Receipts for Effects depoſited, which may be ſold: For Example, a Perſon having 1000 Louis d'ors of the Sun (which are commonly worth from Guild. 11.8 to 11.14 current Money) and wanting ready Caſh, endeavours to ſell his Gold, for which he is only offered Guild 11.8; but reſolving not to admit this low Price, in Hopes of a ſpeedy Riſe he carries them to the Bank, which takes them on the Footing of Guild. 10.14 each, making Guild. 10,700 Bank Money, of which he may diſpoſe, deducting half *per cent.* that he muſt allow for a ſix Months Care of it, as cuſtomary; and if during that Time the Louis are in demand, he withdraws them or ſells his Receipt, as he thinks proper: but if, on the contrary, they ſtill keep low, tho' with an Appearance of ſoon riſing, he carries his Receipt to the Bank, where they debit his Account in the proper Office, Guild. 53.10, for the half *per cent.* mentioned in the Receipt, and on theſe Terms he may prolong the Depoſit to the Time it ſuits him to withdraw it, paying every ſix Months the aforeſaid Sum; and this is the only Caſe in which the Bank gives Receipts that are negotiable. And if the aforeſaid one is ſold, the Buyer, before he can make uſe of its Value, muſt reſtore to the Bank the 10,700 Guild. advanced, and the half *per cent.*

If a Man wants to know what has been wrote in on his Account, he muſt go to the Bank between Seven and Eight in the Morning, and if he lets this Time lapſe, he muſt pay two Stivers; and if he delays it till after Nine, he muſt pay Six Stivers.

The Officers of the Bank are paid by the City; and all that is received for correcting Accompts, Retardation of Hours, and Forfeits, is for the Poor.

The Bank obſerves the following Rules, which it is neceſſary for thoſe who keep Caſh there to be appriſed of.

1. No one can diſpoſe of his Money paid in, till the next Day, except he pays half *per cent.* upon the Sum he deſigns to draw out the ſame Day; for Ex-

ample, if I have got wrote in 6000 Guilders, and have a mind to draw out 4000 of them the ſame Day, my Note will not paſs, neither then, the ſubſequent Day, nor afterwards, till I have paid 20 Guilders for he ſaid half *per cent.*

2dly, There is, however, commonly, three Days in the Year, on which the Money may be diſpoſed of, that is brought in the ſame Day, *viz.* the ſecond Day after opening the Bank, when it has been ſhut for balancing; and at the Feaſt of *Penteceſt.*

3dly, If any more is diſpoſed of than is in Bank, the Penalty of 3 *per cent.* and the Over-draft muſt be paid before any Note.

4thly, As the Bank ſhuts up twice a year, all who have Accompts open muſt balance with it in ſix Weeks after opening, or Penalty of 25 Guilders.

5thly, When an Accompt is once opened in Bank, whatever is entered to its Credit coſts nothing; and formerly only a Stiver was charged for every Sum that went out, or was paid to another; but as Buſineſs was conſiderably augmented in the Year 1714, and occaſioned a great Number of Clerks to be added to the Bank, for the Diſpatch of the Notes brought in to be wrote, it was ordained, that inſtead of one Stiver, two ſhould be paid from the firſt of *February* 1715, which has continued ever ſince, and is always charged the firſt Article in a new Accompt.

When it happens that through Miſtake or Forgetfulneſs a Man writes off a Sum to one he is not indebted to, inſtead of his Creditor, although he immediately gives Advice of the Error, and that the Sum is not yet entered in the Bank Books, he cannot withdraw his Note from the Bank by acknowledging he was miſtaken, not even though he carries the Perſon with him in whoſe Favour the Note is wrote, to declare that the Drawer does not owe him any Thing. The Book-keepers will ſay, that if he has made a Miſtake, the Perſon in whoſe Favour the Error was committed muſt credit the other for the Sum the next Day.

All

All thoſe who have any Thing to write in Bank are obliged to carry their Notes themſelves, in the ſame Manner as thoſe who have Accounts are to go and demand the Balance: or if they will ſave themſelves the Trouble, they muſt impower one of their Compting Houſe to act for them, which will authorize their doing the one and the other. This Procuration coſts 32 Stivers, which is paid for down, and muſt be renewed at the End of a Year and ſix Weeks; and if it ſhould happen that one is obliged to make a pretty long Voyage, and has given an authenticated Procuration to his Wife, or ſome other Perſon, to make all Sorts of Payments, without having left a proportional Number of Bank Notes, ſigned in Blank, to the Sums he imagines he may have to pay during his Voyage, if the Perſon to whom he has given the ſaid Power ſigns the Bank Notes without having the Letter of Attorney regiſtered there, none of them will paſs: and in this Caſe, the Perſon ſo authoriſed muſt carry and leave an authentic Copy of his Power at the Bank, and that he ſigns all the Notes with his Name, adding, By Procuration of ſuch a one; and the noting the ſaid Power coſts 50 Stivers, which is paid out of hand.

The Time of writing in Bank is from Seven or Eight in the Morning to Eleven; but after Eleven to Three, every Note carried in will coſt ſix Stivers, and after Three none are admitted. *Lex Mercat. red.* 32,, *&c*

The Bank Money is fixed to be regulated by Ducatoons of 14 Loot 16 Grains fine, at three Guilders, or 60 Stivers Bank Money, which paſs in current for 63 Stivers, and ſo compound an *Agio* of 5 *per cent.* yet as a Quantity of Ducatoons is not always to be met with, the *Agio* riſes and falls.

But you may bring in ſeveral Kinds of Specie into the Bank, and you will have Credit for it at $\frac{1}{2}$, $\frac{1}{4}$, $\frac{1}{8}$, *per cent.* Intereſt for ſix Months, and they are kept placed to your Accompt ſo long as you pay the ſaid Rates of Intereſt. *Lex. Merc. red.* 323.

By

By a Letter dated 10th of *December* 1751, *I received the following Information from *Amſterdam* of the ſeveral Species that can be depoſited at the Bank, *viz.*

Gold in Cruſades by Marks 22, for which the Bank makes good,

At 310 F. *per* Mark.

Ducats weighty by 1000 Pieces at } 4 F. 19 Stivers more or leſs.

Silver Species.

Mexico Dollars, by Marks,	100	F. 22 *per* Mark	With two Pieces above each 100 Marks
Pillars,	100	Ditto	
Sevilians,	100	Ditto	
Crowns *French*	100	Ditto	

Silver Species.

Ducatoons old by 200 Pieces, weighing Marks	26	2	15——60 Stivers *per* Piece.
Ditto new 200	26	3	12½——Ditto, Ditto.
Rix-Dollars 200	22	5	12½——48 Stivers, Ditto.

Theſe Species being brought in and left in the Bank, muſt be renewed every ſix Months, and made good to the Bank:

½ *per cent.* on the Gold.
¼ Ditto on the Pieces of ⅝ and Rix-Dollars.
⅛ Ditto on the Ducatoons;

but can be taken out again at any Time, by making good to the Bank the above ½, ¼, or ⅛, *per cent.* over and above the Capital.

The greateſt Loans are made upon *Spaniſh* Piaſters, on which they lend 22 *per cent. per* Mark, paying ¼ *per cent.* for ſix Months; for which ſmall Premium you have a Chance for the Riſe during ſix Months in your Favour, which often happens within the Time, and is a great Encouragement for the Trade of Bul-

* *Univ. Merc.* P. 34.

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In *England* * I have often heard the Merchants murmur againſt the Directors of the Bank for not doing the ſame as at *Amſterdam*; for, ſay they, what is it they lend but their Notes? And if Caſh is neceſſary, can it not always be coined out of Gold and Silver; and truly this ſeems at firſt to ſtrike; but when the Charge of Coinage is conſidered (See P. 402.) it is hardly to be expected that the Government ſhould be expoſed to the loſing of ſuch Sums without Limit for a Profit to the Bank of only $\frac{1}{4}$ *per cent.* Beſides that the Coinage is limited by Parliament to 15,000 Pounds a-year.

In the Bank of *England*, the Gold, Silver, and Credit, run promiſcuouſly; but in *Amſterdam* they are ſeparate Things. If at *Amſterdam* you have great Credit, you have no Right to call for Ducatoons at 60 Stivers, as at *London*, Guineas at 21 Shillings, but only he who brings in Money by way of Depoſit, while he continues to pay for its keeping, has a Right to draw it out in the ſame Specie; upon which, in the mean while, he ſtands credited, and may aſſign againſt that Credit to other People who have Demands upon him for Bank Money, and they may aſſign farther.

It is not very likely, that when People firſt brought their Money into Bank, they diveſted themſelves of a Right to draw it out again at Pleaſure. But perhaps, in Proceſs of Time, ſome Inconveniencies reſulted to the Public by the drawing of too large Sums out at once, which induced the Proprietors, as good Patriots, to conſent to its being kept there altogether; or

* *Univ. Merch.* P. 35.

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It is not very likely, that when People firſt brought their Money into Bank, they diveſted themſelves of a Right to draw it out again at Pleaſure. But perhaps, in Proceſs of Time, ſome Inconveniencies reſulted to the Public by the drawing of too large Sums out at once, which induced the Proprietors, as good Patriots, to conſent to its being kept there altogether; or

* *Univ. Merch.* P. 35.

perhaps,

perhaps, by the Sums depoſited at fixed Prices, and the Falls of Gold and Silver, it might happen, that People left ſome Parcels in their Hands, which is become a fixed Treaſure in the Cuſtody of the Bank; and ſince the Profit of the Bank is applied to the public Service, no Body will blame the Perſons in the Management, for making ſome beneficial Uſe of their Wealth.

Beſides the Profit of lending on Gold and Silver, it is known that they furniſh the *Lombards* (Pawnbrokers) with Money, *&c.* and, how much or little they keep in Hand for thoſe who have Credit, and only a Right of aſſigning againſt it, Knowledge of the Remainder centers in very few. Yet every Body knows, that there always lies a great Treaſure; and while the Depoſitors continue to pay Intereſt, they are ſure that their Depoſits are preſerved for them in their own Bags, ſealed up, ready to be delivered at any Time.

By thus giving Credit in their Books, the Bank is not in any Manner expoſed to a Run upon them; but it is for him who maketh the Depoſit to know how far he can make uſe of aſſigning on the Bank, which has its Bounds and cannot extend itſelf beyond the Circle of *Amſterdam* Exchange Buſineſs. And altho' *Amſterdam* has made itſelf the greateſt Place for Exchange to moſt of the trading Cities in *Europe*; and all Bills above 300 Guilders by Law muſt be paid in Bank Money, which gives a large Field for Aſſignments: Yet it will not go beyond the Amount of Caſh, which would elſe ſatisfy the Demands naturally occurring to that Number of People who keep Accompts there, and cannot extend its Credit further.

Whence another Queſtion may ariſe: That as the Poſſeſſors of Accompts of Gold and Silver brought in by way of Depoſit have only a Right to call for Specie, how would it be for all other People, who have Money good upon their Accompts, in caſe of Danger, as of an approaching Enemy, *&c.?*

There then muſt, doubtleſs, be aſſembled the Majority of the People concerned, with Power to call

their

their Truſtees to Account, and to demand a proportionate Share of what Caſh there is; and, I doubt not, but that they have a good Stock of Specie in Reſerve for that Purpoſe: But the ſame as in the Credit of the Bank of *London*, much of it might be out, and otherwiſe inveſted, perhaps lent to the Public, which the Bank of *Amſterdam* can do with more Security than the Bank at *London*, as it is not equally expoſed to a ſudden Run upon it.

In 1672, when the *French* Army were in *Utrecht*, the People of *Amſterdam* thought themſelves in great Danger, and were preſſing to draw out Money from the Bank, which accommodated as many as they could, keeping all Hands at Work to pay out Money: But as all could not be diſpatched ſo ſoon as they wiſhed, ſome ſold their Credit at 4 or 5 *per cent.* Diſcount; whereupon ſeveral rich Men appeared to buy, which the People perceiving, the Run ſoon ceaſed, and the Money was as faſt paid in again. *Univ. Merc.* P. 35, *&c.*

Bank of *Rotterdam.*

This Bank is not ſo conſiderable as that of *Amſterdam*, though the Difference in its Government is very little. It was eſtabliſhed the 18th of *April* 1635, and keeps Accompts with thoſe Merchants who chuſe it in Bank and current Money; the firſt, to pay all foreign Bills which are in Bank Money; and the ſecond for the Diſcharge of Negotiations made at *Rotterdam* on foreign Parts, which are always in current Money. *Lex Mercat. red.* 328.

Method of calculating the *Dutch* Exchange.

For the Method of keeping Accompts in *Holland*, and the Par of Exchange, ſee P. 427.

Example 1. If *London* draws on, or remits to *Amſterdam* 852 *l.* 12 *s.* 6 *d.* Sterling, at 24 Schill. 4½ Groots *Flemiſh per* Pound Sterling, how many Guilders, Stivers, and Pennings muſt be paid or received in Bank Money in *Amſterdam?*

Rule. Reduce the Price of Exchange into Half-groots, which, being multiplied by the Pounds Sterling, gives the Half-groots therein contained, and for the 12 *s.* 6 *d.* take 10 *s.* as the half of 825, and 2 *s.* 6 *d.* as the fourth of that Quotient: Add the whole together, and the Sum total is the half *Flemiſh* Groots contained in the Sterling Money; which being divided by 80 (the Half-groots in a Guilder) produces the Anſwer in Guilders. The 55 Half-groots, equal to $27\frac{1}{2}$ whole Groots = 13 Stivers and 12 Pennings; the $\frac{5}{8}$ of the Half-groot = 2 Pennings $\frac{1}{2}$ as below; which makes 8792 Guilders 13 Stivers $14\frac{1}{2}$ Pennings Bank Money of *Amſterdam*.

Operation.

l.	*s.*	*d.*		*Sch.*	*Groots.*
852	12	6	at	34	$4\frac{1}{2}$
825				12	
4260				412	
1704				2	
6816					
702900				825 = 1 *l.* Sterling.	

s.	
10 = $\frac{1}{2}$ - -	$412\frac{1}{2}$
26 = $\frac{1}{4}$ - -	$103\frac{1}{8}$

8|0)70341|$5\frac{5}{8}$

Guilders $8792\frac{5}{80}$ = $27\frac{1}{2}$ Groots = 13 Stivers 12 Pennings: $\frac{5}{8}$ of the Half groot = $2\frac{1}{2}$ Pennings, which makes the Total 8792 Guilders 13 Stivers $14\frac{1}{2}$ Pennings Bank Money.

Example 1ſt reverſed; or, In 8792 Guilders 13 Stivers $14\frac{1}{2}$ Pennings, how many Pounds Sterling Exchange, at 34 Schillings $4\frac{1}{2}$ Pennings *per* Pound?

Rule. Reduce both the Sum of *Dutch* Money, and the Price of Exchange (which is in *Dutch* Money alſo) into one Denomination, and divide the Sum by the

the Price, and you have the Anſwer in Pounds Sterling; and for the Remainder multiply by the Subdenomination of the Pound Sterling (20 and 12) and you have the Shillings and Pence equivalent to the Fraction.

Operation.

Guild.	*Stiv.*	*Pen.*		*Sch.*	*Pen.*
8792	13	14½	at	34	4½
40				12	
351706				412	
8				8	
2813662				3300	
2				2	
				6600	

66|00)56273|25(852 *l.* 12 *s.* 6 *d.* Sterling.
528
347
330
173
132
4125
20
825|00(12 *s.*
66
165
132
33 = 6 *d.*

Here the Guilders are reduced into Groots, by multiplying by 40, and for the 13 Stivers, you take in 26 Groots; 8 Pennings making a Groot, you multiply by 8, and take in the 14 Pennings: There being

ing alſo an half Penning, makes it neceſſary to reduce the Product into half Pennings, and take in the half.

The Price of Exchange likewiſe being multiplied by 12 and 8, reduces that into half Pennings, and dividing the half Pennings in the whole Sum by thoſe contained in one Pound Sterling, muſt neceſſarily give the Number of Pounds.

Example I. performed by another Method.

Rule: A Schilling *Flemiſh* being 6 Stivers, and 2 Groots being = 1 Stiver; you multiply the 34 by 6, and for 4 Groots, take in 2 Stivers: And as 1 Stiver is = 16 Pennings, and 2 Groots = 1 Stiver; ſo half a Groot is = 4 Pennings: Therefore multiply the Sum of Pounds Sterling by the Stivers and Pennings in one Pound, and the Product gives the Stivers and Pennings in the whole Sum of Pounds; and for the 12 *s.* 6 *d.* take the half of the Stivers and Pennings in one Pound, and for the 2 *s.* 6 *d.* take the fourth of that Quotient: Add the whole together, and you have the Anſwer in Stivers, which being divided by 20 (the Stivers in a Guilder) the Anſwer is produced in Guilders, Stivers, and Pennings.

Operation.

l.	*s.*	*d.*		*Sch.*	*Pen.*
852	12	6	at	34	4½
206	4½			6	
5112				206	

Pen.			
	17040		
4 = ¼ - -	213		
10 = ½ - -	103	2	
2:6 = ¼ - - -	25	12½	
Stivers 2|0)17585	3	14½	

8792 13 14½ Bank Money of *Amſterdam.*

Example

Example II.

To convert the Bank Money of *Amſterdam* into current Money, the Agio being at $4\frac{3}{8}$ *per Cent.*

The Agio is the Difference or advanced Price between the Bank and current Money of *Holland*, that is, in the preſent Caſe, 104 Guilders $\frac{3}{8}$ current Money, is ſuppoſed equal to 100 Guilders Bank Money. *Quære*, How much current Money will 8792 Guilders, 13 Stivers, $4\frac{1}{2}$ Pennings Bank Money of *Amſterdam* make, Agio at $4\frac{3}{4}$?

The Queſtion ſtated according to the Rule of Proportion runs thus:

As 100 Guilders Bank Money, is to 104 Guilders $\frac{3}{8}$ current, ſo is 8792 Guilders, 13 Stivers, $4\frac{1}{2}$ Pennings Bank given, to the required current Money. But as this Work may be greatly abridged by the common Rule for computing the Rate of Intereſt upon Money, it is needleſs to ſhew the tedious Method by the ordinary Rule of Proportion.

	Guild.	*Stiv.*	*Pen.*
	8792	13	$4\frac{1}{2}$
			$4\frac{3}{8}$
	35170	13	2
$\frac{2}{8} = \frac{1}{4}$ - - -	2198	3	$5\frac{1}{8}$
$\frac{1}{8} = \frac{1}{2}$ - -	1099	1	$10\frac{4}{8}\ \frac{1}{2}$
10|0)384|67	18		$1\frac{5}{8}$
20			
13|58			
16			
349			
58			
9|29			
8			
237			

8792	13	$4\frac{1}{2}$	Bank Money.
384	13	$9\frac{1}{2}$	Agio.
9177	6	14	Current Money.

To reduce this again into Bank Money, ſay, by the Rule of Proportion, as 104 Guilders $\frac{3}{8}$, current Money, is to 100 Guilders Banco; ſo are Guilders 9177 6 14 Current Money, to Guilders 8792, 13 Stivers, $4\frac{1}{2}$ Pennings Banco.

Uſance in dealing in Bills of Exchange at *Amſterdam* is not reckoned there as in many other Places, either preciſely 30 Days or 31, or 28, or 29; but their Uſance is drawn on a certain Day, and is payable the ſame Day in the paying Month, without regard to the Number of intervening Days. They generally allow ſix Days of Grace.

Example III.

England exchanges on *Antwerp* for Schillings and Groots *Flemiſh per* Pound Sterling. See P. 427.

Suppoſe 482 *l.* 18 *s.* Sterling to be reduced into *Flemiſh* Pounds, at 35 Schillings 10 Pennings; how much *Flemiſh* Money will it make?

	l.	*s.*	*Sch. Pen.*
	482	18	St. at 35 10 *per l.* St.
	35	10	
	2410		
	1446		
Flem. P.	16870		
6 = $\frac{1}{2}$ - -	241		
4 = $\frac{1}{3}$ - - -	160	8	
10 Sh. St. = $\frac{1}{2}$ -	17	11	
8 = $\frac{2}{5}$ - - -	14	4	
2|0	1730	3	11

£. 865 3 11 *Flemiſh.* 20 *Sc. P.* 35 10

17303 12
12

430

43|0)20764|7

Reduce the ſame into Sterl. at the like Exchange.

[See the next Page.]

43|0)20764|7(482 *l.* 18 *s.* Sterling.
172

356
344

124
86

387
20

7740|18 *s.*
43

344
344

SECT. VI.

Of the Bank of Hamburgh, *and Calculation of the Exchange with that City.*

ALthough the Funds of this Bank are not near ſo conſiderable as thoſe of the Bank of *Amſterdam*, the Integrity and Exactneſs with which every Thing is managed has given it a great Reputation over all *Europe*, and more particularly in the *North*.

It is the Citizens and Corporation who are the Sureties for this Bank, in which the Senate has no Inſpection, and the Directors (being four in Number) are choſen by a Plurality of Votes from among the principal of the Freemen.

Their Duty is to ſee that the Regulations be punctually obſerved, and to furniſh the Caſhiers with Money when any Payments are to be made, which however is done without touching the Treaſure, the Directors taking Care to provide it from other Funds.

In regard to the Capital of this Treaſure, it is ſuppoſed to be very conſiderable; But as the Book-keepers take an Oath not to diſcloſe the Entries and Extracts of the Bank, nor what each Particular depoſits, it is very difficult to conclude any Thing with Certainty; and this Obligation to Secrecy hinders a Creditor from knowing what any one has in Bank, ſo that no Seizure can be made there.

The Book-Keepers, who like the Directors, are four in Number, are obliged to give the Comptrollers two Balances weekly; and none but Citizens are permitted to have an Account in Bank, and from ſuch only it will receive any Caſh by way of Depoſit, without any Intereſt; and it is by theſe Notes on the Bank that they have the Conveniency of paying their Bills of Exchange, and for the Purchaſe of many Sorts of Merchandize, by only making a Transfer of their Value.

Nothing leſs than an hundred Mark Lubs can be wrote into Bank, and two Schillings are paid for every Sum not exceeding three hundred Marks, but whatever is above this may be wrote in *gratis*.

There are certain Hours in the Day appointed for writing into Bank, *viz.* from Seven to Ten in the Morning; but if any one has a mind to write in from Ten to One, and from Three to Five in the Afternoon, he may do it by paying two Schillings for each Sum; and it is alſo in the ſame Morning-hours that a Perſon may inform himſelf, whether the Sums due to him have been entered, which he may alſo do from Ten to One, on paying two Schilling-lubs to the Book-keeper; to avoid which, there are many Merchants who agree with the Bank for a yearly Stipend, to have the Liberty of writing into Bank any Hour they pleaſe, from Seven to One, which is commonly from twenty to forty Mark-lubs, according to the Extent of the Merchant's Buſineſs, and the Quantity of Affairs he has to tranſact.

When any one has a mind to open an Account with the Bank, he muſt pay fifty Rix-dollars of three Marks, or forty eight Schilling-Lubs each.

The Bank is ſhut every Year from the laſt of *December* to the 15th of *January* following, and the Species that are commonly received in it are Rix-dollars, with their Parts of Halves, Quarters, and Eighths; which are generally worth an Eighth, often a Quarter, and even ſometimes a Half *per Cent.* more than the Money which is wrote by Notes into Bank; that is, if there is a Want of Rix-dollars in Specie, an Eighth, Quarter, and as far as a Half, muſt be wrote into Bank more than the Money received; but on the contrary, if one has Caſh in Specie to put in, the Bank only makes good an Eighth, and ſometimes a Quarter *per Cent.* Benefit.

The Bank-books and Writings are kept in Marks, Schillings and Deniers-Lubs; and it is to be obſerved, that the Fractions are never wrote in under one Schilling or ſix Deniers.

Thoſe who have Effects in Jewels, precious Stones, Silver, *&c.* and want to raiſe Money on them, may carry them to the Bank, where they are exactly inventoried, a Loan is advanced at a very moderate Intereſt, and they remain depoſited as a Security for the Repayment of Principal and Intereſt in ſix Months, which if not complied with, the Things are ſold at the Bar of the Bank to the higheſt Bidder, after having advertiſed the Day of their Sale and Delivery.

London Exchanges on *Hamburgh* as on *Holland* and *Antwerp* for Schillings and Groots *Flemiſh per* Pound Sterling. For the Manner of keeping Accounts there, See P. 428.

If *Hamburgh* draws *Flemiſh* Money on *London*, the Operation is performed as before in the Example for *Antwerp*.

But ſuppoſe *Hamburgh* draws upon *London* for 4117 Marks, 5 Schilling-Lubs, at 33 *s.* 10 *d.* Exchange, what muſt be paid for this Draught at *London?*

Rule: Let the Sum and Price be reduced to the ſame Denomination, and the former divided by the latter, and the Fractions of a Pound reduced as before.

Marks. Sch.		33 10	
4117	5	6	Schil.-lubs = 1 Schil.
16		——	*Flem.* and 2 Groots =
——		203	1 Schil.

203)65877(324 *l.* 10 *s.* 4 *d.* Sterling.
Schil.-lubs.

The foregoing Example reverſed.

In 324 *l.* 10 *s.* 4 *d.* Sterling, at 33 Schillings 10 Pennings, how much Mark-money of *Hamburgh?*

Rule: Reduce the Price of Exchange into Schilling-Lubs, as before; multiply by the ſame, and take the Aliquot Parts, as directed under *Antwerp*; and divide the Sum total by 16, to reduce it into Marks. For the remaining Fraction, reduce it into the Subdenominations of a Mark.

SECT. VII.

Examples of the French *Exchanges.*

ENgland exchanges with *France* on the Crown of 3 Livres or 60 Sols *French*, and gives Pence Sterling, more or leſs, for this Exchange-Crown. For the Par of Exchange and Method of keeping Accounts there, See P. 428.

Suppoſe *Paris* owes to *London* 1759 Livres, and remits the ſame Sum to *London* at 30½ *d.* Sterling *per* Crown (as the Courſe of Exchange was on *May* 24th 1759) how much *Engliſh* Money will the ſame amount to?

Rule: As 3 Livres (equal to one Crown, or Ecu) are to the Price of Exchange in Half-pence; ſo are the Livres given, to the Anſwer in Half-pence Sterling;

ling; which reduce into Pounds by dividing by 2, 12, and by 20.

Operation.

If 3 : $30\frac{1}{2}$ :: 1759

2 61

61 1759

10554

3)107299

2)35766 $\frac{1}{3}$

12)17883

1490

74 10 3 $\frac{1}{3}$

The foregoing Example reverſed.

In 74*l.* 10*s.* 3$\frac{1}{3}$*d.* Sterling, how many *French* Crowns Exchange at 30$\frac{1}{2}$*d. per* Crown.

Operation.

d.

If $30\frac{1}{2}$: 3 :: 74 10 3$\frac{1}{3}$

20

1490

12

17883

2

35766

3

61)107299(1759 *l.* Sterling.

SECT. VIII.

Examples of the Spaniſh *Exchange.*

ENgland exchanges with *Spain* upon the Piaſter or Dollar, for an uncertain Number of Pence Sterling. For the Par of Exchange, ſee P. 430.

In *Madrid*, *Cadiz*, *Malaga*, and all the *Spaniſh* Places of Trade in the *Streights*, *Mediterranean*, *Africa* and the *Weſt-Indies*, the *Spaniards* keep their Accounts chiefly in Piaſters, or Dollars, Rials, Half-Rials and Quartiles, reckoning 16 Quartiles to a Rial, and 8 Rials to a Dollar; or in Dollars, Rials, and Maravedies; reckoning 34 Maravedies to a Royal, and 8 Rials to the Dollar. The old Piaſter is valued at 8, the new at 10 Rials of Plate.

Suppoſe a Merchant at *Cadiz* remits to *London* 4536 Piaſters, 6 Rials, old Plate, Exchange at $38\frac{3}{8}$*d. per* Piaſter; how much will the ſame amount to in Sterling Money?

Operation by the Rule of Proportion.

	Piaſ.	*d.*	*Piaſ.*	*Rials.*
If	1	$38\frac{3}{8}$	4536	6
	8	8	8	
	8	—	—	
	64	307	36294	*Rials.*
			307	*Exch.*

64)11142258(174097

Which Quotient divided by 12 and 20 produces 725 *l.* 8 *s.* 1 *d.*

SECT.

SECT. IX.

Of Leghorn *Exchanges.*

ENgland exchanges on *Leghorn* for the Dollar of ſix Livres; and gives Pence Sterling more or leſs for the ſame. For the Par of Exchange and Manner of keeping Accounts there, ſee P. 431.

The Manner of computing Exchanges from this Place, is ſimilar to that for *Genoa*, which ſee in the next Section.

SECT. X.

Of Genoa *Exchanges.*

LOndon exchanges on *Genoa* for the Piaſter or Pezzo, for Pence Sterling more or leſs. For the Par of Exchange and Manner of keeping Accounts there, ſee P. 431.

Example.

How much will a Bill of Parcels from *Genoa* of 3390 Pezzos, 16 Soldi amount to, Exchange at $51\frac{7}{8}d.$ Sterling *per* Pezzo.

Operation by the Rule of Proportion.

Pez. *d.* *Pez.*
If 1 : $51\frac{7}{8}$ :: 3390 : 16
20

Sol.
Or if 20 : $51\frac{7}{8}$ :: 67816
8 8 415

160 415 339080
67816
271264

160)28143640(175897$\frac{3}{4}d.$

Which

Which Quotient divided by 12 and 20, produces 732*l.* 18*s.* $1\frac{3}{4}$*d.*

To reduce *Engliſh* Money into Pezzos of *Genoa*, is but to reverſe the former Proportion.

SECT. XI.

Of Venice *Exchanges.*

England exchanges on *Venice* upon the Ducat of 24 Grains, or Groſs Banco, for Pence Sterling more or leſs. For the Par of Exchange and Manner of keeping Accounts there, ſee P. 431.

Example.

How much will 5640 Ducats 9 Groſs Banco amount to in Sterling Money, Exchange at $53\frac{3}{8}$ *per* Ducat?

Operation.

	Duc.	*d.*		*Duc.*	*Gr.*
If	1	$53\frac{3}{8}$	::	5640	9
				24	
				22569	
				11280	
	Gr.				
Or, If	24	$53\frac{3}{8}$	::	135469	
	8	8		427	
	192	427			

192)57802563(301055 Quot.

Which Quotient being divided by 12 and 20, produces 1254*l.* 7*s.* $11\frac{3}{192}$*d.*

To

To reduce *Engliſh* Money into Banco Money is but to reverſe the Proportion, which in the foregoing Queſtion will ſtand thus: If $53\frac{3}{8}d.$: 1 *Duc.* :: 1254 *l.* 7 *s.* 11 *d.* will be found to be 5640 Ducats 9 Groſs Banco, obſerving in this Caſe to multiply the Remainder of the firſt Diviſion by 24, the Groſs in a Ducat (and in any other Caſe, by the Number of the next leſs Denomination contained in the Piece the Exchange is rated by) which divided by the old Diviſor will give the Groſs.

SECT. XII.

Of Portugal *Exchanges.*

ENgland exchanges with this Kingdom by the Millrea, and gives Pence and Parts of a Penny for it, according to the Courſe of Exchange, which is generally from 5 *s.* 3 *d.* to 5 *s.* 8 *d.* For the Par and Manner of keeping Accounts there, ſee P. 432.

Example.

A Merchant of *Oporto* ſends over to *England* a Cargo of Wine to the Value of 1654 ℔ 320 Reas, Exchange at 5 *s.* $3\frac{3}{8}d.$ *per* Millrea; how much does the ſame amount to in Sterling Money?

Rule: As 1000 Reas are to the Price of Exchange, ſo are the Reas given to the Anſwer in Pence *Engliſh.*

Operation.

Operation.

Reas.	*s. d.*	*Reas.*
If 1000 :	5 $3\frac{3}{8}$ ::	1654320
Or, if 8000 :	507 ::	1654320
		507

11580240
82716000

8000)838740240(104842 Quot.
Remainder 4240, or 53 = $\frac{1}{2}$ *d.*

Which Quotient (*viz.* 104842) divided by 12 and 20, produces 436 *l.* 16 *s.* 10$\frac{1}{2}$*d.* the Anſwer.

Queſtions of this kind may alſo be wrought by the Rule of *Practice*, as under, obſerving to keep the Millreas ſeparate from the Reas, and that the Quota of the Reas make only decimal Parts of a Pound; but the Method aforeſaid is preferable, being more plain and eaſy, and generally ſhorter, as the laſt three Figures in the Dividend may always be cut off, which, with what remains from the fourth, are but ſo many fractional Parts of a Penny, according the Diviſor.

Former Example reſumed.

Operation.

1654,320 at 5 *l.* $3\frac{3}{4}$*d.*

5 *s.* = $\frac{1}{4}$	-	413,580
3 *d.* = $\frac{1}{20}$	-	- 20,679
$\frac{2}{8}$ = $\frac{1}{12}$	-	- 1,723
$\frac{1}{8}$ = $\frac{1}{24}$	-	- - 862

Anſwer 436,844 or 436 *l.* 16 *s.* 10$\frac{1}{2}$*d.*

The Value of the laſt Figures (*viz.* 844) is found by multiplying by 12 and 4, and cutting off the Figures

Figures to the left Hand above three in each Product; ſo of any other.

To reduce *Engliſh* Money into Reas of *Portugal*, is but to reverſe the former Rule, *i. e.* beginning the Proportion with the Price of Exchange, and multiplying the firſt and ſecond Terms into the fractional Part of the Exchange, as before.

The former Example reverſed.

Operation.

s. d. *Reas.* *l.* *s.* *d.*

If 5 $3\frac{3}{8}$: 1000 :: 436 16 $10\frac{1}{2}$

8

Or, if 507 : 8000 : 104842,53

8000

Reas.

507)838740240,00(1654,320 Anſw.

In this Caſe, the Decimal, .53 equal to the Remainder of the Operation in the former Caſe, is taken in for the Half-penny, to make it exact, ſince a Farthing is nearly equal to 4 Reas.

Example II.

How many Reas of *Portugal* will 500 *l.* Sterling amount to, at 5 *s.* $4\frac{5}{8}$ *d.* per Millrea?

s. d.

If 5 $4\frac{5}{8}$: 1000 :: 5000

8

Or, if 517 : 8000 :: 12000

8000

Reas.

517)960000000(1856,866 Anſw.

SECT.

SECT. XIII.

Of Exchanges to and from the Weſt Indies *and* America.

IN the *Britiſh* Dominions in *America* and the *Weſt Indies*, they keep their Accounts in Pounds, Shillings and Pence, as they do in *London*; and in *America* they generally call their Money *Currency*. In moſt of the *Britiſh* Settlements upon the Continent of *America*, they have few Coins of any Sort circulating among them: What few they have are generally *French* and *Spaniſh* Pieces; ſo that they are obliged to ſubſtitute a Paper Currency for a Medium of their Commerce for want of a Competency of Caſh for Circulation.

The following Table ſhews at what Value the foreign Coins are to paſs in the *Engliſh* Colonies and Plantations on the Iſlands in *America*, according to an Act of Parliament made in the ſixth Year of Queen *Anne*, for aſcertaining their Values.

	Weight.		*tr. val.*		*cur. val.*		
	dwt.	*gr.*	*s.*	*d.*	*s.*	*d.*	*q.*
Dollar (old Plate) of *Seville*	17	12	4	6	6	0	
Ditto of New - - -	14	0	3	7¼	4	9	2⅔
Mexico ditto - - -	17	12	4	6	6	0	
Pillar ditto - - - -	17	12	4	6¾	6	0	
Peru ditto (old Plate) -	17	12	4	5	5	10	2⅔
Croſs Dollar - - - -	18	0	4	4¾	5	10	1⅓
Ducatoon of *Flanders* -	20	21	5	6	7	4	
French Crown or Ecu -	17	12	4	6	6	0	
Cruſadoe of *Portugal* -	11	4	2	10¼	3	9	2⅔
3 Guilder Piece of *Holland*	20	7	5	2¼	6	10	3⅔
OldRixdollar of theEmpire	18	10	4	6	6	0	

And to remedy the Inconveniences which were cauſed by the different Rates at which Pieces of the ſame Species were current, it was ordered by Proclamation,

tion, and confirmed by the ſaid Act of Parliament, that after the 1ſt of *January* 1704, no *Pillar*, *Mexico* or *Seville* Pieces of Eight, though of full Weight, as above, ſhould be received nor paid at above ſix Shillings a piece, and the half Quarters, and the other leſs Pieces in Proportion. And the Currency of all the other Pieces above mentioned are not to exceed the ſame Proportion.

And the ſaid Act enjoins, that if any one ſhall receive or pay any of the ſaid Pieces for any more than as above, they ſhall forfeit ten Pounds.

SECT. XIV.

Of Exchanges to and from Ireland.

AT *Dublin*, and all over *Ireland*, Books and Accounts are kept in Pounds, Shillings and Pence as in *England*, and Exchanges to or from thence are always rated at ſo much *per Cent.* Advance, or Diſcount, on the Money of the different Kingdoms reſpectively.

The Par of one Shilling *Engliſh*, is one Shilling and a Penny *Iriſh*, and by that Proportion that of 100 *l.* Sterling will be 108 *l.* 6 *s.* 8 *d. Iriſh.* Therefore the Par between the two Nations will be 108$\frac{1}{3}$ *l. per Cent.* and whatever is given more or leſs in the Price of Exchange, will be ſo much Gain or Loſs *per Cent.* The Courſe of Exchange runs from 6 *l.* to 12 *l. per Cent.*

Example.

If a Merchant remits to *Dublin* 1758 *l.* Sterling, Exchange at 9$\frac{5}{8}$ *per Cent.* how much will the ſame amount to there?

Rule: As 100 *l.* is to 100 *l.* and the Rate of Exchange; ſo is the Sum given to be exchanged, to the Anſwer.

Operation.

Operation.

If 100 : $109\frac{5}{8}$ :: 1758.
Or, if 800 : 877 :: 1758
877

l. *s.* *d.*
800)1541766(1927 4 $1\frac{3}{4}$ Anſw.

Rem. 166 = 4 *s.* $1\frac{3}{4}$ *d.*

Exchanges to *Dublin* being only an Advance of ſo much *per Cent.* may be calculated as ſo much Intereſt, which added to the Principal, will be the Sum to be received in *Ireland.*

Exchanges from *Ireland* to *England* are found by reverſing the Proportion in the foregoing Example.

Example.

How much will 1760 *l.* Iriſh Money amount to in *England,* Exchange at $8\frac{1}{3}$ *per Cent.*

Operation.

If $108\frac{1}{3}$: 100 :: 1760
3 3
Or, 325 : 300 :: 1760
300

l. *s.* *d.*
325)528000(1624 12 3

Rem. 200 = 12 *s.* 3 *d.*

SECT.

SECT. XV.

Of the Nature, and great Advantage ariſing from the Knowledge of arbitrating the European *Exchanges, with Variety of proper Examples.*

ARbitration, in Matters of Foreign Exchange, is the moſt beneficial, as well as the moſt delicate Branch of Exchange to be thoroughly informed of.

Before any one applies himſelf to the Study of this Subject, it is neceſſary that he ſhould be well ſkilled in all the practical Operations, in regard to the reducing of the *Sterling* Money of *England* into the foreign Monies of *Exchange*, and of Account, of all Places throughout *Europe*, according to the direct Courſes of Exchange eſtabliſhed for theſe Purpoſes, and *vice verſâ*. Alſo,

2. That he ſhould be acquainted with the Methods of converting Sterling Money into the Monies of Exchange, and of Account of all other Places of Commerce wherewith *England* has no direct eſtabliſhed Courſes of Exchange, but is under the Neceſſity of making uſe of the intermediate Exchange of other Places; together with the Nature of the *Agios*, and the Manner of converting their *Bank Monies* into current, and the reverſe.

3. The Manner of calculating all the foreign Monies throughout *Europe* into thoſe of every other diſtinct Country, either according to the *direct* or *intermediate Exchange*; which makes a much greater Variety of Caſes, than thoſe, who are not thoroughly acquainted with this extenſive Subject, can imagine.

4. It is previouſly neceſſary, alſo to the entering upon a Knowledge of the Arbitration of Exchanges, to know the *intrinſic* Value of foreign Monies, according to the moſt accurate Aſſays which have been made for that Purpoſe.

5. Laſtly, it is requiſite to underſtand the general natural Cauſes of the Riſe and Fall of the Courſe of Exchange between Nation and Nation, or between one trading Nation and another in the ſame Nation.

That I may communicate my Meaning with the greater Perſpicuity, it may be proper, for the Satisfaction of others, as well as practical Merchants and Remitters, to premiſe, That as the Advantages to be made by underſtanding how to arbitrate the Exchange at all Times, and in reſpect to all Places, depend on the general Riſe and Fall of the Prices of Exchange between one Nation and another; ſo that Riſe and Fall depends on the Balance of Trade being either in Favour of, or againſt a Nation.

That the Courſe of Exchange is the Criterion of the Balance of Trade, has been allowed, not only by great Stateſmen and ſpeculative Politicians, but by the moſt ſkilful and ſagacious practical Traders.

As this Matter is put in a very rational and familiar Light by thoſe able and diſtinguiſhed Merchants of the City of *London*, who were inſtrumental, in Conjunction with the late ever memorable Earls of *Halifax* and *Stanhope*, in defeating the *French* Treaty of Commerce in the Year 1712; I ſhall quote their Reaſoning upon this Point from the *Britiſh Merchant*; in Conſequence of which, the practical Application of what we ſhall communicate on the Topic under Conſideration, will appear the more intelligible.

" Suppoſe, ſay they, the Tenant in *Wiltſhire* is to " pay for Rent 100 *l.* to his Landlord in *London*, and " the *Woollen Draper* in *London* is to pay the like " Sum to his *Clothier* in *Wiltſhire*; both theſe Debts " may be paid, without tranſmitting one Farthing " from one Place to another, by *Bills of Exchange*, or " by exchanging one Debtor for the other, thus; that " is, the Tenant may receive the Landlord's Order to " pay 100 *l.* to the *Clothier* in the Country; and the " Woollen Draper may receive his *Clothier*'s Order " to pay the like Sum to the Landlord in Town.

" Theſe two Orders are properly called *Bills of* " *Exchange*; the Debts are exchanged by them; that " is, the *Woollen Draper* in Town, inſtead of the Te- " nant in the Country, is become Debtor to the " Landlord; and the Tenant in the Country, in- " ſtead of the *Woollen Draper* in Town, is become " Debtor to the *Clothier:* And when theſe Orders " are complied with, the two Debts between *London* " and the Country are diſcharged without ſending " one Shilling in *Specie* from the one to the other, " In like Manner, the Ware-houſe Man in *London* " is indebted in 100 *l.* for Stuff to the Weaver in " *Norwich*, and the Linen Draper in *Norwich* is in- " debted in the like Sum to the *Hamburgh* Merchant " in *London.* Both theſe Debts may be paid by " *Bills of Exchange*, or by the Exchange of one " Debtor for the other, by placing one Debtor in " the other's ſtead; that is, the Ware-houſe Man " may receive the Order of his Weaver to pay 100 *l.* " to the *Hamburgh* Merchant; and the Linen Dra- " per may receive the Order of the *Hamburgh* Mer- " chant to pay the like Sum to the Weaver. Theſe " Orders are Bills of Exchange: The Debtor in one " Place is charged for the Debtor in the other; and " thus both Debts may be paid without ſending one " ſingle Shilling in *Specie* from the one City to the " other. But if the Debts due from both Places are " not equal, then only the ſame Quantity of Debts " on both Sides can be paid by Bills of Exchange. " The Balance muſt be ſent in Money from the City " from whence the greateſt Sums are due. For Ex- " ample:

" If, by the Trade between *London* and *Norwich*, " the former owes 10,000 *l.* to the latter, and the " latter no more than 9000 *l.* to the former; it is " manifeſt that only the Debts of 9000 *l.* on each " Side can be diſcharged by Bills of Exchange; the " Ballance of 1000 *l.* muſt be ſent either from *London* " or ſome other Place indebted to *London*, to even " the Account between both the Cities.

" Let us ſuppoſe then, that to ſend and inſure " 1000 *l.* in *Specie* to *Norwich* would coſt 5 *l.* or 10 *s.* " *per cent.* which of the Debtors in *London* would be " willing to be at this Charge? It is natural to be- " lieve, that every one will ſhift it off from himſelf, " that every one will endeavour to pay his Money by " a Bill of Exchange; it is natural to believe, that " every one, rather than ſtand the Coſt and Hazard " of ſending 100 *l.* in *Specie*, would pay 100 *l.* 5 *s.* " in *London* for a Debtor in *Norwich*, upon Condi- " tion that the *Norwich* Debtor ſhould pay 100 *l.* for " him in that City.

" By which Means the *Norwich* Debtor would pay " his Debt of 100 *l.* in *London* with leſs than that " Sum, while the *London* Debtor would be obliged to " give more than that Sum for the Payment of an 100 *l.* " in *Norwich*. And if ſuch for Years together were " the Courſe of Exchange between *London* and *Nor-* " *wich*, there could be no Queſtion to which of the " two Cities a Sum muſt be ſent in *Specie* to pay the " Balance; that City undoubtedly pays the Balance " that gives more than the Par; that undoubtedly " receives the Balance, that gives leſs than the Par " for Bills of Exchange. The Courſe of Exchange " in this Caſe would ſufficiently decide that the Ba- " lance of Trade is on the Side of that City that " procures Bills of Exchange upon the moſt eaſy " Terms. I have taken Examples from two *Engliſh* " Cities where the Money is of the ſame Denomi- " nation, and the ſame Quantities are equally at Par " in both: But the Caſe is the very ſame between two " Cities where the Denominations of the Money are " different, as long as any certain Quantity of Money " in the one can be reduced to a Par of Equality with " any certain Quantity of Money in the other.

" For Example: The old *French* Crown was juſt " equal or par to 54 * Pence *Engliſh*; 444$\frac{4}{9}$ of theſe " Crowns were juſt par or equal to 100 *l.* Ster-

* This was in the Year 1713; but what the Caſe is at preſent ſee Page 42.

" ling.

" ling. Every Farthing given more or leſs than " 54 *d.* for a Crown in a Bill of Exchange between " *London* and *Paris*, amounts to 9 *s.* 3 *d.* upon 444 " Crowns, or upon ſo many Times 54 *d.*

" Suppoſe then the Courſe of Exchange between " *London* and *Paris* ſtood thus heretofore. If a Man " in *Paris*, indebted in *London*, paid a Farthing leſs " than the *Par* for a Bill of Exchange upon *London*, " to pay 54 *d.* there, the *Pariſian* paid his Debt of " 100 *l.* to *London* by a Bill of Exchange that coſt " him in *Paris* 9 *s.* 3 *d.* leſs than that Sum; and if a " Merchant in *London* gave a Farthing more than the " *Par* for a Bill of Exchange upon *Paris* to pay a " *French* Crown, the *Londoner* gave 9 *s.* 3 *d.* more " than 100 *l.* for a Bill of Exchange, to pay that " Sum in *Paris*.

" If ſuch was the Courſe of Exchange between " *London* and *Paris*; if the firſt gave above the *Par*, " and the ſecond leſs than *Par*, for Bills of Ex- " change to pay their reſpective Debts, there can be " no Doubt that Bills of Exchange were more eaſily " to be had in *Paris* than at *London*; and conſe- " quently that greater Sums were due from the latter " than the former, and that we paid a Balance upon " our Trade to that Kingdom. And as the Price " roſe here to a Penny or two Pence above the *Par*, " or fell there ſo much below it, it ſhewed ſo much " the greater Scarcity here, and the greater Plenty " there, of Bills of Exchange; and that ſo much " the greater Balance of Bullion was going hence " by Means of our Trade in that Country."

Here let the intelligent practical Merchant and Remitter, *&c.* make his Obſervations on what we mean by the intrinſic Arbitration of the Exchanges, which need not be further enlarged upon, if he conſiders the due Application of what has been ſaid; this ſingle Caſe being as good as a Multitude.

The foregoing Reaſoning may be further carried on thus: If the City of *Bourdeaux* owes 100,000 Ounces of Silver at *Paris*, and ſends Wines and

Brandies to *Holland* for 100,000 Ounces; and if *Holland* ſends Specie to *Paris* for 100,000 Ounces due to the Bankers at *Bourdeaux:* and with theſe the Specie Merchants at *Paris* remit and pay the 100,000 Ounces they owe to *Holland:* In this Caſe, the Exchange between *Bourdeaux* and *Paris*, *Bourdeaux* and *Holland*, and *Paris* and *Holland*, will be at a Par; there will be no Variation but what proceeds from the Commiſſion of the Negotiators concerned in the Returns.

But in regard that the Coin in *France* is reckoned by Livres, Sols, and Deniers, and in *Holland* by Florins, Stivers, and Groots; that the Coin in Uſe in *Holland* differs in the Standard, Bulk, and Mark, from that uſed in *France*; the Computation of the Exchanges is made by the exchanging ſo many *Dutch* Groots for a *French* Exchange Crown. And altho' this at firſt View does not ſeem to denote that the Exchange is ſo much *per cent.* over or under Par, yet in reality it is ſo; and the Banker concerned in the *Dutch* Exchange knows how to calculate this Par in the Tale of *French* Crowns, and *Dutch* Groots. So that the Exchange between *London* and *Paris*, and *Paris* and *Amſterdam*, *&c.* is in Effect carried on juſt as it is between *London* and *Wiltſhire*, or *London* and *Norwich*; only with this Difference that the Accounts are kept in other Languages, and that the Charge and Riſk of ſending Money from *London* to *Paris*, or from *Paris* to *Amſterdam*, is greater than that of ſending it from *London* to *Wiltſhire* or *Norwich*; and when the Balance of Trade with *Amſterdam* is againſt *Paris*, the Exchange at *Paris* will be from 5 to 6 *per cent.* above the Par by Bills on *Amſterdam*, where it will ſeldom exceed an half above Par between *London* and *Norwich.*

Whether *France* pays *Livres*, *Sols*, and *Deniers*, for *Rials of Plate* and *Maravedies*, new or old, in *Spain*; for *Cruſadoes* or *Milreas* in *Portugal*; for *Guilders*, *Rix Dollars*, or *Mark-lubs*, in the *North*; for *Pounds*, *Shillings*, and *Pence* Sterling; for *Marks*, *Piaſtres*, and

and *Ducats*, in *Italy*: The Par of the Exchange is always Ounce for Ounce of Silver, or rather of Gold, that being of eaſier Carriage, and moſt commonly is tranſported in the Balance of Trade; and the Computations and Evaluations of the Exchange will ſquare every where with our firſt Examples.

If *France* owes a Balance in Trade to *Flanders* of 100,000 Ounces; *Flanders* to *Holland* of 100,000 Ounces; *Holland* to *England* of 100,000 Ounces; *England* to *Spain*, of 100,000 Ounces; *Spain* to *Italy* of 100,000 Ounces; *Italy* to *Germany* of 100,000 Ounces; *Germany* to *France* of 100,000 Ounces; the Exchange may be carried on at *Par* between all theſe Countries, without any Tranſportation of Gold or Silver. But as the Balance of Trade grows due gradually from one Country to any other by an Importation of Commodities, the Variation of Exchanges follows in the ſame Proportion.

And it is the Buſineſs of the judicious general Merchant, and the ſagacious Remitter, to ſpeculate where the Balance of Trade lies among the *European* Nations at all Points of Time; for by that Means he may embrace his Opportunities of Advantage, and theſe almoſt daily, between ſome Nation or other, provided his Credit and Correſpondence are duly eſtabliſhed to admit thereof.

From what has been ſaid the Reader may obſerve the Utility of knowing the intrinſic Arbitration of Exchange by comparing the Courſes with the real Value of Money.

Another Method of conſidering the Arbitration of Exchanges is founded upon comparing the various occaſional Prices of Exchange together between Nation and Nation; in order to diſcover at all Times whether certain Courſes continue in an Equality of Proportion, or how far they deviate therefrom: By which Means the Advantage to be made by ſuch a Compariſon of Exchanges may be exactly aſcertained, for the Government of the Merchant or Remitter

to take his Meaſures accordingly, and not to let the advantageous Occaſion eſcape his Cognizance.

Before I enter upon the Illuſtration of this Matter by Examples, it will be proper to obſerve, that in a Compariſon or Combination of the Courſes of Exchange of ſeveral Places together, 'tis rare, very rare indeed, that they happen to ebb and flow in an exact Equality of Proportion; the Reaſon whereof muſt be obvious to every one who conſiders that the Balance of Trade differs between different Nations; and conſequently, from what has been ſaid, the Courſes of Exchange will be in Favour, or otherwiſe, of ſome Nations, when compared with others.

This being the Caſe, the Judgment of the Exchange Negotiator conſiſts in vigilantly obſerving, from a due Compariſon of the Courſes, where the greateſt Inequality of Proportion lies; for there lies the greateſt Profit to be made by drawing and remitting to certain Places, preferably to others.

But the greateſt Profit to be made this Way does not always happen to ariſe, from a Compariſon of thoſe Courſes only, where the general Currency of a Trader's Buſineſs lies. On the contrary, from the Circumſtances and the Nature of the Trade of ſuch Countries, the Riſe and Fall of the Courſes may generally continue in ſuch an Equality of Proportion, as only occaſionally or ſeldom to admit of any Extra-profit by the Exchange. Whence it is, that thoſe who are unacquainted with the Niceties of their Computations think there are little or no Advantages to be made to other Places with which they do not happen to have any Tranſactions. This is an egregious Miſtake; nay, if a Merchant has Dealing with two or three different Nations, 'tis very rare but conſiderable Advantages are to be made by knowing how to arbitrate the Exchanges with Accuracy: And the more general his Correſpondence is with various Nations, the greater Opportunities he has of reaping Benefit by his ſuperior Skill in this Branch of mercantile Science.

Arbi-

Arbitration of Exchanges muſt be conſidered under two diſtinct Heads, *viz.* Simple and Compound.

In Simple Arbitration, the Prices of Exchange from one Place are generally given to other two, in order to find the Price between the ſaid two, which is called *the arbitrated* Price of Exchange. Or, if a Factor has Orders from his Employer to remit a certain Sum of Money to a Place, provided he can do it at a certain Price of Exchange mentioned, and at the ſame Time is ordered to draw for it upon ſome other Place, at a certain Price, for the Value of the Sum he has remitted. Now, as the Courſe of Exchange is always upon the Fluctuation, being ſeldom two Days alike, he has to conſider whether the Advantage in performing the one Part of his Commiſſion will be ſufficient to compenſate for the Loſs that may happen or ariſe from the other. In order to diſcover which Method will be of moſt Advantage to his Employer, he muſt very often make uſe of ſeveral Operations; yet by Simple Arbitration he will eaſily diſcover whether he can fulfil his Orders upon the Place deſired, in drawing for the Value he has remitted to the other, without Loſs at the current Price. And in caſe he finds the Negotiation would be attended with Loſs, he then writes to his Correſpondent, who, on the Receipt thereof, probably orders him to draw upon ſome other Place, or to wait till the Courſe falls.

Factors or Agents have generally an Allowance which is called *Commiſſion*, of ſo much *per cent.* for their Trouble; and if any Advantage attends the Negotiation from the current Price of Exchange to either or both Places, that is properly due to the Employer.

The Method of finding the Par of Exchange at three different Places, the Par of one with two of them being given, to find the Par between the other two is as follows: And in order that this may be clearly underſtood, let it be ſuppoſed that each Corner of an equilateral Triangle repreſents one of the ſaid Places,

and

and that two of the Sides be given to find the third. The ſingle Rule of Three will ſolve all Queſtions in Simple Arbitration, provided due Care be taken in the ſtating thereof. From the two following Triangles of Equality, 'tis evident the Exchange at each Place is on a Par with thoſe of the other two, as they reciprocally prove each other; and if any Sum of Money ſhould be remitted from one to the other two, and from the latter home, it would be returned intire, without Loſs.

Examples.

A Triangle of Equality for *Paris*, *Amſterdam*, and *London*.

Angle I.

Suppoſe Bills at *Paris* on *London* at 32 *d.* *per* Crown, and on *Amſterdam* at 54 *d.* or Groots *per* Crown, what muſt the Price of Exchange be between *London* and *Amſterdam*, to be on a Par with the Exchange from *Paris* to thoſe Places?

Operation.

s. *d.*

If 32 : 54 :: 20 or 240

54

32)12960(405 *d.* Quotient.

Which Quotient divided by 12 produces 33 *s.* 9 *d.* the Anſwer.

Angle II.

Suppoſe Bills at *London* on *Amſterdam* are at 33 *s.* 9 *d.* *per* Pound Sterling, and on *Paris* at 32 *d.* *per* Crown of 3 Livres or 60 Sols, what Price muſt the Exchange between *Amſterdam* and *Paris*, be, to be on a Par with the other two?

Ope-

Operation.

	s.	*s.*	*d.*		*d.*
If	20	: 33	9	::	32
		12			
		405			
		32			

240)12960(54 *d.* of *Holland per* Crown, Anſwer.

Angle III.

If Bills at *Amſterdam* on *Paris* be at 54 *d. per* Crown, and in *England* at 33 *s.* 9 *d. per* Pound, what Price muſt the Exchange between *Paris* and *London* be, to be on a Par with theſe of *Amſterdam* to thoſe Places?

	s.	*d.*		*s.*		*d.*
If	33	9	:	20	::	54
	12			12		
	405			240		
				54		

405)12960(32 *d. Engliſh per* Crown, the Anſw.

In this Triangle of Equality, if a Draught for 200 *l.* Sterling were remitted to *Paris* at 32 *d. per* Crown, it would be found to be worth 1500 Crowns there; and if the ſaid Crowns were remitted to *Amſterdam* at 54 *Dutch* Pence *per* Crown, the Draught would have Credit there for 81000 *l.* or 2025 Guilders.

Again, if the Guilders were remitted to *London* at 33 *s.* 9 *d. per* Pound, the Draught will be found to amount to juſt 200 *l.* Therefore it appears that the Exchange at all thoſe Places is exactly on a Par, ſince the 200 *l.* has gone through both *France* and *Holland*, and is remitted home again intire.

Another Triangle of Equality for *London*, *Hamburgh*, and *Holland*.

Angle

Angle I.

If *London* can remit to, or draw on *Hamburgh*, at 34 *s.* 2 *d. per* Pound, and to *Holland* at 35 *s.* 5 *d.* what Price muſt the Exchange be between *Hamburgh* and *Holland*, to be on a Par with the Exchange from *London* to thoſe Places?

	s.	*d.*		*s.*		* *Sch.*	*L.*
If	34	2	:	355	::	32	
	12			12		2	
	410			425		64	
				64			

410)27200(66$\frac{1}{3}$ Groots, or Pence *Flem.* the Anſ.

Angle II.

When *Amſterdam* can remit to *London* at 35 *s.* 5 *d.* and to *Hamburgh* at 66$\frac{1}{3}$, or rather 66$\frac{1}{4}\frac{1}{4}$, what muſt the Rate of Exchange be between *London* and *Hamburgh*, to be on an Equality with the other two?

Operation.

	d.		*d.*		*s.*	*d.*
If	66$\frac{1}{4}\frac{4}{1}$	:	64	::	35	5
	41		41		12	
	2720		2624		425	
			425			

2720)1115200(410*d*=34*s.* 2 *d. Flem.* Anſwer.

Angle III.

If *Hamburgh* draws on *London* at 34 *s.* 2 *d. per* Pound Sterling, and on *Amſterdam* at 66$\frac{1}{3}$*d.* or rather

* The Dollar of *Hamburgh* of two Marks, or 32 Schilling-lubs, or 64 *Flemiſh*, being the certain Price of Exchange to *Holland*, is here ſubſtituted to find the arbitrated Price with *Holland*.

66$\frac{1}{4}\frac{4}{1}$*d.*

$66\frac{14}{41}$*d. per* Dollar, what will be the arbitrated Price of Exchange between *London* and *Amſterdam*?

Operation.

If 64 : $66\frac{14}{41}$ :: 34 2
41 41 12

2624 2720 410
410

2624)1115200(425 *d.* = 35 *s.* 5 *d. Flem.* Anſwer.

At theſe Rates of Exchange, it is plain any Sum of Money remitted from any of theſe Places to the ſecond, and from thence to the third, would be remitted from thence home again entire.

Of Compound Arbitration.

Compound Arbitration joins together ſeveral Rules of Three into one, or at one Operation performs a Series or Chain of the Single Rule of Proportion; and by the Relation that ſeveral Antecedents have to their Conſequents, the Proportion between the firſt Antecedent and the laſt Conſequent is diſcovered, as well as the Proportion between the others in their ſeveral Stations.

It is by this Rule that Merchants generally make their Calculation both in equating (or finding the Par at the current Prices) the Exchanges of Money, and alſo thoſe of Weights and Meaſures, in all Caſes where more than three Places are concerned.

Inſtructions.

1. Place the Antecedents in one Column and the Conſequents in another to the right Hand of them.

2. The firſt Antecedent and the laſt Conſequent, to which an Antecedent is required, muſt always be of the ſame Denomination or Species.

3. The

3. The firſt Conſequent muſt be of the ſame Denomination with the ſecond Antecedent; and likewiſe the ſecond Conſequent to the third Antecedent, *&c.* throughout.

4. If there be a Fraction in any of the Numbers, both the Antecedent and Conſequent muſt be multiplied into the Denomination of the ſaid Fraction, as they ſtand, and the Proportion holds the ſame as if no Fraction occurred.

The Terms being thus diſpoſed, proceed as follows, *viz.*

General Rule.

Multiply all the Antecedents into one another, and alſo the Conſequents into each other; and divide the Product of all the Conſequents by the Product of all the Antecedents, and the Quotient will be the Anſwer, or the Value of the Antecedent required.

Example.

1. *London* being to remit 500 *l.* to *Spain*, how many Piaſters of 272 Maravedies will it amount to there excluſive of Charges, ſuppoſing the ſaid Sum to be remitted to *Holland* at 35 *s. per* Pound, from thence to *France* at 58 *d. Flemiſh per* Crown, from *France* to *Venice* at 100 Crowns *per* 60 Ducats Banco, and from *Venice* to *Spain* at 360 Maravedies *per* Ducat Banco.

Diſpo-

Diſpoſition of the Terms.

Antecedents.

If 1 *l.* Sterling is equal to 35 *s.* or 420 *d. Flemiſh*
58 *d. Flemiſh* = 1 Crown of *France*
100 C. *France* = 60 Ducats *Venice*
1 D. of *Venice* = 360 Maravedies *Spain*
272 Maravedies = 1 Piaſter

How many Piaſters for 500 *l.* Sterling?

58	420
100	60
5800	25200
272	360
Diviſ. 1577600	9072000
	500

[Anſw.

1577600)4536000000(2875$\frac{1}{3}$ nearly,

Now, ſuppoſing the direct Exchange to *Spain* at the Time of this Remittance at 42$\frac{1}{2}$ *d. per* Piaſter, the 500 *l.* would only be found to be worth 2823$\frac{1}{2}$ Piaſters; therefore 52 Piaſters nearly would be ſaved by the Negotiation aforeſaid, or about two *per Cent.* excluſive of Charges.

Proof of the Queſtion aforeſaid.

This Rule, like all the Rules of Three, is proved by the Doctrine of Contraries; therefore if the Poſition be begun with the laſt Conſequent (ſave that to which an Antecedent was required) and end with the laſt Antecedent, and all the other Conſequents be made Antecedents, and the Antecedents Conſequents throughout, if they be multiplied and divided as before, the Quotient will give the laſt Conſequent in the former Caſe to which an Antecedent is required.

Diſpoſition

Diſpoſition of the Terms.

Antecedents.

If 1 Piaſter be equal to 272 Maravedies
360 Maravedies = 1 Ducat
60 Ducats = 100 Crowns
1 Crown = 58 *d. Flemiſh*
420 Pence *Flemiſh* = 1 *l.* Sterling

How many Pounds Sterling for 2875 Piaſters, or rather $2875\frac{125}{493}$?

Piaſters.

$2875\frac{125}{493}$
493

1417500 Piaſters multiplied into the Fraction.

	360	272
	90	100
	21600	27200
	420	58
	9072000	1577600
For the Fract.	493	1417500

Diviſor 4472496000)2236248000000(500 *l.* Anſw.

The Method of abridging the Terms of this Rule.

The Rule is rendered much more eaſy and practicable, by abridging or contracting the Terms by the Rule of Equalities, which is founded upon the third Axiom of the firſt Book of *Euclid*, *viz. If from equal Numbers equal Numbers be deducted, the Remainders will be equal*; *and if equal Numbers be divided by equal Numbers, their Quotients will be equal.*

It is plain the Antecedents and Conſequents are all equal (as they ſtand oppoſed to one another) therefore if any Antecedent and any Conſequent, in any Part of the Equation, be divided by any Number or Numbers that will divide both without a Remainder, their Quotients

Quotients will be equal; or if any of the Antecedents has a like Number with any of the Conſequents, ſuch Numbers may be cancelled in both.

The former Queſtion reſumed.

Diſpoſition of the Terms as before.

Antecedents.		Conſequents.
If —— 1 *l.* St	= 420 *d. Flem.*	—210
29— 58 *d.*	= 1 C.	——
—100 C.	= 60 D.	—— 30
— 1 D.	= 360 M.	—— 45
17—34—272 M.	= 1 P.	——
	——500	——5
29		210
17		30
493 Diviſor.		6300
		45
		283500
		5
		——— [Anſw.

493)1417500(2875$\frac{123}{493}$

Inſtruction. To abridge the Terms begin with the greateſt firſt; now ſeeing 100 is contained 5 times in 500, therefore the Quotient 5 is removed to another Column oppoſite to the 500, and a Daſh placed at the 100, to ſhew that it is cancelled; then divide 272 and 360 by 8, and place the Quotients 34 and 45 in the next Column oppoſite to each other; next, halve 58 and 420, and remove the Quotients 29 and 210 as before; laſtly, halve the 34 (in the ſecond Column) and the 60, and remove the Quotas as before. Now, ſeeing you can reduce the Antecedents no lower, multiply all thoſe left into one Sum, and the Conſequents into another, divide the Product of the latter by the former, and the Quotient will be the Anſwer, as before.

Example II.

In which the Terms are abridged.

A Merchant of *Amſterdam*, owing 800 *l. Flemiſh* to *London*, remits the ſame firſt to *France* at 56 *d. Flemiſh per* Crown, from thence he orders it to be remitted to *Venice* at 100 Crowns *per* 60 Ducats, from thence to *Hamburgh* at 100 Pence *Flemiſh per* Ducat, from thence to *Liſbon* at 50 *d. per* Cruſade of 400 Reas, and laſtly, from *Liſbon* to *England* at 5 *s.* 4 *d. per* 1000 Reas, or Millrea. Now the Queſtion is, how much the ſame will amount to in Sterling Money? And how much will be ſaved, ſuppoſing the Exchange from *Holland* directly to *England* at 36 *s.* 10 *d.* at the Time?

Diſpoſition of the Terms.

If 56 *d. Flemiſh* be equal to 1 Crown of *France*
100 C. of *France* = 60 Ducats of *Venice*
1 Ducat = 100 *d.* of *Hamburgh*
50 *d. Hamburgh* = 400 Reas of *Portugal*
1000 Reas = 64 *d. Engliſh*

How many Pence *Engliſh* for 800 *l. Flemiſh*, or 192000 *d. Dutch.*

The Numbers removed.

7—14—56 = 1
—100 = 60 — 30
—1 = 100 —
—50 = 400 — 8
—1000 = 64 — 16
— 192000 — 192
16

3072
8

24576
30

[Anſwer.

7)737280(105325$\frac{5}{7}$ = 438 *l.* 17 *s.* 1$\frac{5}{7}$ *d.*

Thus

Thus it appears that the 800 *l. Flemiſh* would come to 438 *l.* 17 *s.* $1\frac{5}{7}$ *d.* after going through all the aforeſaid Places, excluſive of Charges; and if it had been remitted to *London* at 36 *s.* 1 *d.* according to the direct Courſe, it would only have Credit for 434 *l.* 7 *s.* $9\frac{8}{21}\frac{7}{21}$ *d.* Therefore the *Holland* Merchant would ſave 4 *l.* 10 *s.* Sterling, nearly by the Negotiation tranſacted in the Manner aforeſaid.

Example III.

To find the arbitrated Price when ſeveral Places are concerned. If the arbitrated Price between *Holland* and *England* ſhould be demanded, ſuppoſing the Remittance ſhould go through all the Places aforeſaid; that may readily be found thus: Make the 64 *d.* Sterling (the Price of the Millrea) the firſt Antecedent, and then all the former Conſequents will become Antecedents, and all the Antecedents Conſequents; then as this Rule muſt always end with the ſame Species or Denomination it is begun with, place 240, the Pence in a Pound Sterling, for the laſt Conſequent. The Terms being thus diſpoſed, abbreviate, multiply and divide them as before, and the Quotient will be the arbitrated Price demanded; which being compared with the direct Courſe, it may be eaſily diſcovered which Method will be more advantageous, and how much ſo, to the Place where the Negotiation was begun.

The Prices in the former Queſtion reſumed.

Diſpoſition of the Terms.

If 64 *d.* = 1000 Reas
400 Reas = 50 *d. Hamburgh*
100 *d. Hamburgh* = 1 Ducat *Venice*
60 Ducats = 100 Crowns *France*
1 Crown = 56 *d. Flemiſh*
How many Pence *Flemiſh* for 240 *d.* or 1 *l.* Sterl.

The Terms removed.

2—4—8—32—64 = 1000—10—5
—4—400 = 50—25
—100 = 1—
—60 = 190—
—1 = 56—14—7
240—4—

25 Conſ. left.
5
125
7
[the Anſw:

2)875(437½*d.* or 36*s.* 5½*d.*

By this the whole may be proved; for if 1 *l.* Sterling give 36 *s.* 5½ *d.* *Flemiſh*, 438 *l.* 17 *s.* 1⅝ *d.* Sterling in the former Part hereof will be found to be juſt 800 *l.* *Dutch* or *Flemiſh*.

Example IV.

A. of *London* has 1360 Piaſters owing from *B.* of *Leghorn*, and *B.* adviſes he can remit him at 50 *d.* Sterling *per* Piaſter; now *A.* finding he can have no more at home in caſe he ſhould draw for them, orders *B.* to remit them in the following Manner, *viz.* firſt to *Venice* at 94 Piaſters for 100 Ducats Banco, from thence to *Cadiz* at 320 Maravedies *per* Ducat, from thence to *Liſbon* at 630 Reas *per* Piaſter of 272 Maravedies, from thence to *Amſterdam* at 50 *d.* *per* Cruſade of 400 Reas, from thence to *Paris* at 56 *d.* *per* Crown, and laſtly, from thence home at 31⅓ *d.* Sterling *per* Crown; the Queſtion is, how much will the arbitrated Price be *per* Piaſter between *London* and *Leghorn* the ſaid Piaſters coming through all the aforeſaid Places: and how much will *A.* have ſaved excluſive of Charges.

Diſpoſition

Diſpoſition of the Terms to find the arbitrated Price.

If 94 Piaſters = 100 Ducats of *Venice*,
1 Ducat = 320 Maravedies of *Spain*,
272 Maravedies = 630 Reas of *Portugal*,
400 Reas = 50 *d.* of *Amſterdam*,
56 *d. Amſterdam* = 1 Crown of *France*,
$\left.\begin{matrix}1\\3\end{matrix}\right\}$ Crowns = $\left\{\begin{matrix}31\frac{1}{3}\\94\end{matrix}\right\}$ Pence Sterl.
How many Pence Sterl. for 1 Piaſter?

The Terms removed.

Antecedents. Conſequents.

—94 = 100—
—1 = 320— 40—10— 5
34—272 = 630—210—30—15
—4—400 = 50— 25
—8 —56 = 1—
—3 = 94—
—1

25 Conſequents.
15

375
5

Anteced. left the Div. 34) 1875(55$\frac{5}{34}$ arbitrated Price *per* Piaſter, the Anſwer.

Inſtruction.

Cancel 94 on each Side of the Equation; then to abridge the other Terms, firſt obſerve that 400 contains 100 four Times, ſo the 4 is removed. Then 3 goes 210 Times in 630, which 210 is removed; then divide 56 and 210 in the ſecond Column by 7, and remove the Quotas 8 and 30 to the next Columns;

then obſerving 8 in the ſecond Column will go 40 Times in 320, cancel the 8 and remove 40 oppoſite to 320. Here it is to be obſerved, that it makes no Difference, how far the Terms be removed, or on what Column on either ſide the Equation the Numbers ſtand; next divide the 40 by 4, which cancel and place 10 oppoſite to the 40; and laſtly, ſeeing 10, 30, and 50 are all the Conſequents left, and 272 all the Antecedents, half all the Conſequents, and in Lieu thereof half 272 thrice, or divide by 8, and you will find you can abridge no more. Then to know how much the 1360 Piaſters will amount to at $55\frac{5}{34}$ *d.* Sterling *per* Piaſter, that may be found by the Single Rule of Three, or by placing the ſaid Numbers for the laſt Conſequent, and repeating the Prices as before, thus:

Antecedents.

If —49 = 100 —
—1 = 320 —40—10
—272 = 620—210—30
—4—400 = 50
—8 —56 = 1—
—3 = 94—
How many Pence Sterl. for } 1360—5

10 Conſequent left.
30
300
50
15000
5
75000 *d.* 2 *l.* 10 *s.* the Anſw.

Here,

Here, as the Antecedents are all cancelled, the Conſequents left, multiplied into one another, give the Anſwer. Thus it appears that *A.* would make 312 *l.* 10 *s.* of the 1360 Piaſters, whereas if he had drawn for them, or ordered *B.* to remit, he would have only made 283 *l.* 6 *s.* 8 *d.* of them, according to the Courſe, by a direct Exchange at 50 *d. per* Piaſter; therefore he would ſave 29 *l.* 3 *s.* 4 *d.* by the Negotiation tranſacted in the Manner aforeſaid. *Brit. Neg.*

APPENDIX.

A Note payable to an Infant when he ſhould come of age (mentioning the Time) is negotiable.

COUNSEL ſhewed Cauſe why the Judgment obtained by the Plaintiff againſt the Defendant in an Action upon a promiſſory Note ſhould not be arreſted; the Note having been objected to, as contingent, uncertain, and not negotiable within the Act of 3 and 4 *Ann. c.* 9.

This was a promiſſory Note given to an Infant, payable *when he the (Infant) ſhall come of age, which will be* 12 *June*, 1750. The Defendant's Counſel had moved to arreſt the Judgment, for that this was not a good Note, within 3 and 4 *Ann. c.* 9. *ſect.* 1. for giving like Remedy, upon promiſſory Notes, as upon Bills of Exchange. In Anſwer to which, the Counſel for the Plaintiff cited 2 *Strange*, 1217, the Caſe of *Cooke* v. *Colebam*; where a Note, *to pay in ſix Weeks after the Defendant*'s *Father*'s *Death*, was holden a good Note; and that the Sum payable by the preſent Note, is *debitum in præſenti*, though *ſolvendum in futuro*.

The Counſel for the Defendant argued, that in this Declaration, are 9 Counts on Notes of Hand indeed; but the Notes ſet forth in the Declaration, are not Notes for the Benefit of Trade; nor is the Money made *certainly* payable: The Note was given to the Plaintiff 13 Years before the Time when he was to come of Age; and it was not at all certain, that he would live to attain that Age. They cited 2 *Strange*, 1151, the Caſe of *Beardeſley* v. *Baldwyn*, where a Note "to pay within ſo many Days after the Defendant

dant ſhould marry," was held not to be a negotiable Note within the Statute. The Caſe of *Cooke* v. *Coleham*, cited by the Counſel for the Plaintiff, 2 *Strange*, 1251, was payable ſix Weeks after a Death; which was a *certain* Event. In Order to have the Effect of a promiſſory Note within this Statute, it ought to be a Note, payable at all Events. No Note is negotiable, which is not for the Payment of Money abſolutely, 1 *Strange* 629, *Morris* v. *Lee*, which was a Note promiſing *to be accountable to the Plaintiff or order for* 100 *l. Value received*, and held good. But a *Quere tamen* is added by Sir *John Strange*. All Notes payable on Contingences are bad, within this Act: And this is a Contingency, *Whether he may arrive at the Age of* 21, *or not*.

Chief Juſtice: It would have been clearly good, if it had been made payable on the 12th of *June*, 1750, that is to ſay, on a Day certain, without mentioning the Plaintiff's being then to come of age: And ſurely it is not the *leſs* certain, for *adding* that Circumſtance. The former Part of the Note is a Promiſe to pay the Money, and the reſt is only fixing the particular Time when it is to be paid; it is enough, if it be certainly at all Events payable at that Time, whether he lives till then, or dies in the Interim. This is a good Note within this Remedial Statute.

A contingent Note, where it is uncertain whether the Money ſhall ever become payable at all, or not, is another Caſe: Such a Note is not within the Statute; and therefore I think this is a good Note within the Statute, 3 & 4 *Ann. c.* 9.

Deniſon, Juſtice: I am of the ſame Opinion. In this note there is no Condition or Uncertainty: But it is to be paid at all Events; only the Time of Payment is poſtponed. And the Caſe of *Cooke* v. *Coleban* was the Opinion of the whole Court. He alſo cited 3 *Co. rep.* 19.

Foſter, Juſtice: Here the Time of Payment is *certainly* fixed; and the particular Day ſpecified for Payment of the Money, being mentioned to be the

Day

Day on which the Infant is to come of age, makes no Difference, from what it would have been, if that Circumſtance had been omitted.

And they all agreed that this was *debitum in præſenti*, though *ſolvendum in futuro*; and diſcharged the Rule, and ordered the Poſtea to be delivered to the Plaintiff. *MS. Caſes in B. R. Hil.* 30 *Geo.* II. *Goſſ.* v. *Nelſon.*

A Note payable on an uncertain Event is not negotiable.

AN Action was brought upon a promiſſory Note, brought by the Indorſee, againſt one Perſon only; though the Note imported, upon the Face of it, to have been made by two Perſons; and the Declaration was upon the Note, as if it had been an abſolute one, payable on the Death of a Perſon named in it; whereas it appeared, upon the Face of it, to have been given upon two ſeveral Conditions. For the Note when given in Evidence, came out to be thus *We* (naming the Defendant and another Perſon) promiſe to pay to A. B. 116*l.* 11*s.* (value received) *on the Death of* George Henſhaw; *provided he leaves either of us ſufficient to pay the ſaid Sum, or if we ſhall be otherwiſe able to pay it.* It was ſigned by the Defendant *only*; and it was laid in the Declaration, merely as a promiſſory Note, abſolutely, and in all Events payable on the Death of *George Henſhaw.*

The Counſel for the Plaintiff made two Queſtions, 1. Whether this be a negotiable Note: 2. Whether this Note, given in Evidence, ſupports the Declaration; which is upon an abſolute Note payable on the Death of *G. H.* As to the firſt Point, there can be no Doubt but that if the Note given in Evidence had not the Proviſo added to it; but had merely been made payable on the Death of *George Henſhaw*; it had been a good negotiable promiſſory Note, within the Statute of 3 & 4 *Ann, c.* 9. For the Contingency of the Death of *G. H.* is not ſuch an uncer-

tain

tain Contingency, as that the Event may poſſibly or probably never happen; and ſo the Note might perhaps never become payable. But it is an Event certain and neceſſary; and no otherwiſe, nor in any other reſpect uncertain, than merely as to the particular Time when it will happen: So that it is no more than the ordinary Caſe of a promiſſory Note payable at a future Day. And to prove this Doctrine, and that this is a negotiable Note, he cited 2 *Strange*, 1217, the Caſe of *Cooke* v. *Colehan*, full in Point; being *to pay*, &c. *within ſix Weeks after the Defendant*'s *Father*'s *Death*. 1 *Strange*, 24. the Caſe of *Andrews* v. *Franklin* is ſtill ſtronger; being *to pay*, &c. *within two Months after ſuch a Ship ſhall be paid off*. And as to the Proviſo or Condition, it is made abſolutely payable, on *George Henſhaw*'s Death, an Event which will certainly happen; therefore the Proviſo is repugnant to the Body of the Note.

As to the ſecond Point, it is objected, 1. That the Note is only laid, as the Defendant's ſeveral Note: Whereas it imports upon the Face of it, to be made by two Perſons, jointly. Anſwer. Perhaps *one* only ſigned it, or if the other did alſo ſign it, it was nevertheleſs equally the Note of the Defendant. It is laid in the Declaration, and muſt be pleaded according to its legal Operation. 1 *Strange*, 76. the Caſe of *Butler* v. *Maliſſey*, is directly in Point.

It is objected, 2dly, That this is laid as an abſolute Note, without mentioning the two Conditions (of being payable) *if he ſhall be able*; or *if Henſhaw ſhall leave either of them ſufficient to pay it*. Anſwer. This Note will ſufficiently ſupport the Declaration. And to ſupport this Aſſertion were cited 6 *Mod.* 228. the Caſe of *Roberts* v. *Harnage*, 2 *Salk.* 659. *S. C.* 4 *Ed.* IV. 29; and 1 *Strange*, 76. the Caſe of *Butler* v. *Maliſſey*, before mentioned.

Lord Mansfield: This Note was payable upon a Contingency; and therefore it is not an abſolute Note. What would it ſignify, to have put all theſe Contingencies, if the Party was abſolutely, and at all

all Events bound to pay it upon the Death of *George Henſhaw?* Moſt manifeſtly, it was not intended that he ſhould be bound to pay it upon *George Henſhaw*'s Death, at all Events. This Note therefore being payable upon an uncertain Contingency, is not a negotiable Note.

Deniſon, Juſtice: A Note payable eventually upon an uncertain Contingency, can never be a negotiable Note. And if it had been ſo, yet there ought to have been an Averment, *That* George Henſhaw *did leave one of them ſufficient to pay it*; or *that the Defendant was otherwiſe able to pay it.* And indeed this ſhews plainly that it is not a negotiable Note within the Meaning of the Act of Parliament; which means and intends an abſolute Note at all Events. And I think too, that it is a Variance in the Declaration, from the Note itſelf, for want of ſetting out theſe Conditions: It ought to have been ſet out as it really was.

But indeed one of theſe Points depends upon the other: and I think this Note is only eventually and conditionally payable; and by no Means abſolutely and at all Events.

Foſter, Juſtice: I am of the ſame Opinion both as to the Variance; and alſo that it was not a negotiable Note, as being payable eventually, and not abſolutely. *Per Cur.* Judgment for the Defendant. *MS. Caſes in B. R. Eaſt.* 30 *Geo.* II. *Roberts* v. *Peake.*

Action of Trover lies not for a Bank Note.

AN Action of Trover was brought againſt the Defendant, upon a Bank Note, for the Payment of 21 *l.* 10*s.* to one *William Fenny* or Bearer, on Demand. The Cauſe was tried before *Lord Mansfield*, at the Sittings at *Guildhall*, *London*; and upon the Trial it appeared that *William Fenny*, being poſſeſſed of this Bank Note, on the 11th of *December*, 1756, ſent it by the General Poſt, under Cover, directed

rected to a Perſon at *Chipping Norton* in *Oxford-ſhire*; that on the ſame Night the Mail was robbed, and the Bank Note in Queſtion (amongſt other Notes) taken and carried away by the Robber; that this Bank Note, on the 12th of the ſame *December*, came into the Hands and Poſſeſſion of the Plaintiff, for a full and valuable Conſideration, and in the uſual Courſe and Way of his Buſineſs, and without any Notice or Knowledge of this Bank Note being taken out of the Mail.

It was admitted and agreed, that in the common and known Courſe of Trade, Bank Notes are paid by and received of the Holder or Poſſeſſor of them, as Caſh; and that in the uſual Way of negotiating Bank Notes, they paſs from one Perſon to another as Caſh, by Delivery only, and without any farther Inquiry or Evidence of Title, than what ariſes from the Poſſeſſion. It appeared that Mr. *Finny* having Notice of this Robbery, on the 13th of *December*, applied to the Bank of England, to ſtop the Payment of this Note: which was ordered accordingly, upon Mr. *Finney*'s entering proper Security to indemnify the Bank.

Some little Time after this the Plaintiff applied to the Bank for the Payment of this Note; and, for that Purpoſe, delivered the Note to the Defendant, who is Clerk in the Bank: But the Defendant refuſed either to pay the Note, or to deliver it to the Plaintiff. Upon which, this Action was brought againſt the Defendant.

The Jury found a Verdict for the Plaintiff, and the Sum of 21*l.* 10*s.* Damages; ſubject nevertheleſs to the Opinion of this Court upon this Queſtion, *viz.* Whether, under the Circumſtances of this Caſe, the Plaintiff had a ſufficient Property in this Bank Note, to intitle him to recover in the preſent Action?

The Counſel for the Defendant argued, that the preſent Action was brought, not for the Money due upon the Note; but for the Note itſelf, the Paper, the Evidence of the Debt: So that the Right to the

Money

Money is not the preſent Queſtion: The Note is only an Evidence of the Money's being due to him as Bearer. The Note muſt either come to the Plaintiff by Aſſignment; or muſt be conſidered as if the Bank gave a freſh, ſeparate, and diſtinct Note to each Bearer. Now the Plaintiff can have no Right by the Aſſignment of a Robber. And the Bank cannot be conſidered as giving a new Note to each Bearer: though each Bearer may be conſidered as having obtained from the Bank a new Promiſe. This Note was the Property of Mr. *Finney*, who paid in the Money; he is the real Owner: it is like a Medal, which might intitle a Man to Payment of Money, or to any other Advantage. And it is by Mr. *Finney*'s Authority and Requeſt, that the Defendant detained it.

It may be objected, that this Note is to be conſidered as Caſh, in the uſual Courſe of Trade. But ſtill, the Courſe of Trade is not at all affected by the preſent Queſtion, about the Right to the Note. A different Species of Action muſt be brought for the Note, from what muſt be brought againſt the Bank for the Money: And the Plaintiff has elected to bring Trover for the Note itſelf, as Owner of the Note; and not to bring his Action againſt the Bank, for the Money.

The Caſes that may affect the preſent, are 1 *Salk.* 126. *M.* 10 *W.* III. *Anonymus*, *Coram Holt*, Chief Juſtice, at *Niſi prius* at *Guildhall*. There Lord Chief Juſtice *Holt* held that the right Owner of a Bank Bill, who loſt it, might have Trover againſt a Stranger who found it: But not againſt the Perſon to whom the Finder transferred it for a valuable Conſideration, by reaſon of the Courſe of Trade which creates a Property in the Aſſignee or Bearer. 1 *Lord Raym.* 738. *S. C.* in which Caſe, the Note was paid away, in the Courſe of Trade. *Hil.* 12 *W.* III. *B. R.* 1 *Salk.* 283, 284. *Ford* v. *Hopkins*, *per Holt* Chief Juſtice at *Niſi prius* at *Guildhall*, "if Bank Notes, Exchequer Notes, or Million Lottery Tickets, or the like, are ſtolen or loſt, the Owner has ſuch an Intereſt or Pro-

perty in them, as to bring an Action, into whatſoever Hands they are come. Money or Caſh is not to be diſtinguiſhed: But theſe Notes or Bills are diſtinguiſhable, and cannot be reckoned as Caſh; and they have diſtinct Marks and Numbers on them." Therefore the true Owner may ſeize theſe Notes wherever he finds them, if not paſſed away, in the Courſe of Trade. 1 *Stran.* 505. *Hil.* 8 *Geo.* I. In Middleſex, *Coram Pratt*, Chief Juſtice, *Armory* v. *Dalamirie*. A Chimney-Sweeper's Boy found a Jewel: it was ruled, that the Finder has ſuch a Property as will enable him to keep it againſt all but the right Owner; and conſequently, may maintain Trover. This Note is like any other Piece of Property, until paſſed away in the Courſe of Trade. And here the Defendant acted as Agent to the true Owner.

The Counſel for the Plaintiff argued, that the Holder of this Bank Note, upon a valuable Conſideration, has a Right to it, even againſt the right Owner. There are ſeveral Caſes, where the Uſage, Courſe, and Convenience of Trade, make the Law: and, ſometimes, even againſt an Act of Parliament. 3 *Keb.* 444. *Stanley* v. *Ayles*. *per Holt*, Chief Juſtice at *Guildhall*. 2 *Strange*, 1000. *Lumley* v. *Palmer*: where a parol Acceptance of a Bill of Exchange was holden ſufficient againſt the Acceptor. 1 *Salk.* 23. This Paper Credit has been always, and with Reaſon, favoured and encouraged. 2 *Strange*, 946. *Jenys* v. *Fawler et al.* The Uſage of theſe Notes is, That they paſs by Delivery only; and are conſidered as current Caſh; and the Poſſeſſion always carries with it the Property. 1 *Salk.* 126. *pl.* 5. is in Point. A particular Miſchief is rather to be permitted, than a general Inconvenience. This is to be conſidered upon the ſame Foot as a Sale in Market Overt. 2. *Inſt.* 713. "A Sale in Market Overt binds thoſe that had Right."

But it is objected, that there is a ſubſtantial Difference between a Right to the Note, and a Right to the Money. But we ſay the Right to the Money

will attract to it a Right to the Paper. Our Right is not by Aſſignment; but by Law, by the Uſage and Cuſtom of Trade. We do not contend that the Robber, or even the Finder of a Note, has a Right to the Note: But after Circulation, the Holder upon a valuable Conſideration has a Right. We have a Property in this Note; and have recovered the Value againſt the Withholder of it. It is not material, what Action we could have brought againſt the Bank. And we agree that the true Owner might purſue his Property, where it came into the Hands of another, without a valuable Conſideration, or not in the Courſe of Trade: which is all that Lord Chief Juſtice *Holt* ſaid in 1 *Salk.* 284. As to 1 *Strange*, 505. the Finder has the Property againſt all but the right Owner; *not* againſt him.

The Counſel for the Defendant in reply argued, That the Holder of the Note has a ſpecial Property in it. But it does not follow that he can maintain Trover for it, againſt the right Owner. Suppoſing this Note to be a Sort of mercantile Caſh; yet it has an Ear-mark, by which it may be diſtinguiſhed: Therefore Trover will lie for it: and ſo is the Caſe of *Ford* v. *Hopkins*. And a Thing ſtolen may be recovered from a Merchant, as well as a Thing ſtolen from another Man. And this Note is a mere Piece of Paper: It may be as well ſtopped, as any other Sort of mercantile Caſh, as, for Inſtance, a Policy which has been ſtolen; and this has not been paſſed away in Trade, but remains in the Hands of the true Owner. And therefore it does not ſignify in what Manner they are paſſed away, when they are paſſed away: for this was not paſſed away. Here the true Owner, or his Servant (which is the ſame Thing) detains it; and, ſurely, Robbery does not diveſt the Property.

This is not like Goods ſold in Market Overt; nor does it paſs in the Way of a Market Overt; nor is within the Reaſon of a Market Overt. Suppoſe it was a Watch ſtolen: the Owner may ſeize it (though

he find it in a Market Overt) before it is ſold there: But there is no Market Overt for Bank Notes. We deny that the Holder (merely as Holder) has a Right to the Note againſt the true Owner: And we deny that the Poſſeſſion gives a Right to the Note.

Lord Mansfield delivered the Reſolution of the Court. After ſtating the Caſe at large, he declared that at the Trial, he had no Sort of Doubt, but that this Action was well brought, and would lie againſt the Defendant in the preſent Caſe; upon the general Courſe of Buſineſs, and from the Conſequences of Trade and Commerce: which would be much incommoded by a contrary Determination. This Caſe has been very ingeniouſly argued by the Counſel for the Defendant. But the whole Fallacy of the Argument turns upon comparing Bank Notes to what they do not reſemble, and what they ought not to be compared to, *viz.* to Goods or to Securities, or Documents for Debts. They are not Goods, nor Securities, nor Documents for Debts, nor are ſo eſteemed; but are conſidered as Money, as Caſh, in the ordinary Courſe and Tranſaction of Buſineſs, by the general Conſent of Mankind; which gives them the Credit and Currency of Money, to all Intents and Purpoſes. They are as much Money as Guineas themſelves are; or any other current Coin, that is uſed in common Payments as Money or Caſh. They paſs by a Will, which bequeaths all the Teſtator's Money or Caſh; and are never conſidered as Securities for Money, but as Money itſelf. In a Suit in the Court of Chancery in 1748, upon Lord *Aileſbury*'s Will, 900 *l.* in Bank Notes was conſidered as Caſh. On Payment of them, wherever a Receipt is required, the Receipts are always given as for Money; not as for Securities or Notes. So, on Bankruptcies, they cannot be followed as identical and diſtinguiſhable from Money; but are always conſidered as Money or Caſh.

Reporters ſometimes catch at quaint Expreſſions that may happen to be dropped at the Bar or Bench; and

and miſtake their Meaning. It has been quaintly ſaid, *that the Reaſon why Money cannot be followed is, becauſe it has no Ear-Mark:* But this is not true; the true Reaſon is, upon Account of the Currency of it: it cannot be recovered after it has paſſed in Currency. So, in Caſe of Money ſtolen, the true Owner cannot recover it, after it has been paid away fairly and honeſtly upon a valuable and *bona fide* Conſideration: But before Money has paſſed in Currency, an Action may be brought for the Money itſelf. There was a Caſe in 1 *Geo.* I. at the Sittings, *Thomas* v. *Whip*, before Lord *Macclesfield.* It was an Action upon Aſſumpſit, by an Adminiſtrator againſt the Defendant, for Money had and received to his Uſe: The Defendant was Nurſe to the Inteſtate during his Sickneſs; and being alone, conveyed away the Money. And Lord *Macclesfield* held that the Action lay. Now this muſt be eſteemed a finding at leaſt. Apply this to the Caſe of a Bank Note, an Action may lie againſt the Finder, it is true; and it is not at all denied; but not *after* it has been paid away in Currency. And this Point has been determined, even in the Infancy of Bank Notes; for 1 *Salk.* 126. *M.* 10 *W.* III. at *Niſi prius*, is in Point: And Lord Chief Juſtice *Holt* there ſays, that it is by Reaſon of the Courſe of Trade, which creates a Property in the Aſſignee or Bearer.

An Innkeeper took the preſent Note *bona fide*, in his Buſineſs, from a Perſon who had the Appearance of a Gentleman. Here is no Pretence or Suſpicion of Colluſion with the Robber; for this Matter was ſtrictly enquired and examined into at the Trial, and is ſo ſtated in the Caſe, that he took it for a full and valuable Conſideration, in the uſual Courſe of Buſineſs. Indeed if there had been any Colluſion, or any Circumſtances of unfair Dealing, the Caſe had been much otherwiſe. If it had been a Note for 1000 *l.* it might have been ſuſpicious: But this was a ſmall Note, for 21 *l.* 10*s.* only; and Money given in Exchange for it.

Another Caſe cited was a looſe Note in 1 Lord *Raym.* 738. ruled by Lord Chief Juſtice *Holt* at *Guildhall*, in 1698; which proves nothing for the Defendant's Side of the Queſtion; but it is exactly agreeable to what is laid down by my Lord Chief Juſtice *Holt*, in the Caſe I have juſt mentioned. The Action did not lie againſt the Aſſignee of the Bank Bill; becauſe he had it for a valuable Conſideration. In that Caſe he had it from the Perſon who found it; but the Action did not lie againſt him, becauſe he took it in the Courſe of Currency; and therefore it could not be followed in his Hands. It never ſhall be followed into the Hands of a Perſon who *bonâ fide* took it in the Courſe of Currency, and in the Way of his Buſineſs.

The Caſe of *Ford* and *Hopkins* was alſo cited. This Caſe was in *Hil.* 12 *W.* III. *Coram Holt*, Chief Juſtice at *Niſi prius*, at *Guildhall*; and was an Action of Trover for Million Lottery Tickets: But this muſt be a very incorrect Report of that Caſe. It is impoſſible that can be a true Repreſentation of what Lord Chief Juſtice *Holt* ſaid: It repreſents him as ſpeaking of Bank Notes, Exchequer Notes, and Million Lottery Tickets, as like to each other. Now no two Things can be more unlike each other, than a Lottery Ticket and a Bank Note. Lottery Tickets are identical and ſpecifick; ſpecifick Actions lie for them: They prove extremely unequal in Value; one may be a Prize, the other a Blank. Land is not more ſpecifick than Lottery Tickets are. It is there ſaid, that the Delivery of the Plaintiff's Tickets to the Defendant, as that Caſe was, was no Change of Property. And moſt clearly it was no Change of Property: So far, the Caſe is right. But it is here urged to prove, *that the true Owner may follow a ſtolen Bank Note, into what Hands ſoever it ſhall come.* Now the whole of that Caſe turns upon the throwing in Bank Notes, as being like Lottery Tickets. But Lord Chief Juſtice *Holt* could never ſay, That an Action would lie againſt the Perſon, who, for a valuable

luable Conſideration, had received a Bank Note which had been ſtolen or loſt, and *bonâ fide* paid to him; even though the Action was brought by the true Owner: Becauſe Bank Notes are not like Lottery Tickets, but Money. The Perſon who took down this Caſe, certainly miſtook Lord Chief Juſtice *Holt*, or miſtook his Reaſons. For this Reaſoning would prove, that if a Man paid to a Goldſmith 500*l.* in Bank Notes, the Goldſmith could never pay them away.

A Bank Note is univerſally, both at home and abroad, treated as Money, as Caſh, and paid and received as Caſh; and it is neceſſary, for the Purpoſe of Commerce, that their Currency ſhould be eſtabliſhed and ſecured.

There was a Caſe in the Court of Chancery, in *December* 1749, on ſome of Mr. *Child*'s Notes, payable to the Perſon to whom they were given, or Bearer. The Notes had been loſt or deſtroyed many Years: Mr. *Child* was willing to pay them to the Widow and Adminiſtratrix of the Perſon to whom they were made payable, upon their giving Bond, with two reſponſible Sureties (as is the Cuſtom in ſuch Caſes) to indemnify him againſt the Bearer, if the Notes ſhould ever be demanded. The Adminiſtratrix brought a Bill; which was diſmiſſed, becauſe ſhe either could not, or would not give the Security required. No Diſpute ought to be made with the Bearer of a Caſh Note, in Regard to Commerce, and for the ſake of the Credit of theſe Notes; though it be both reaſonable and cuſtomary to ſtay the Payment till Inquiry can be made, whether the Bearer of the Note came by it, fairly, or not.

The whole Court were unanimous, and ordered the Poſtea to be delivered to the Plaintiff. *MS. Caſes in B. R. Hil.* 31 *Geo.* II. *Miller* v. *Race.*

Lord *Mansfield* delivered the Opinion of the Court upon the following Caſe. Mr. *Meybohm*, of *Peterſburgh*, had Dealings with Mr. *Amyand* and Company of *London*, who often ſent Ships from *London*, to Mr.

Meybohm at *Peterſburgh*. *Meybohm*, as appeared by Evidence, was indebted, on the Balance of their Accounts, to *Amyand* and Company: who ſent a Ship, called the *Galloway*, *Stephen Baker*, Maſter, to Mr. *Meybohm*, at *Peterſburgh*, to fetch certain Goods. *Meybohm* ſent the Goods, and promiſed to ſend the Bill of Lading by the next Poſt, but never did. Afterwards, *viz.* in *Auguſt* 1756, *Amyand* and Company got a Policy of Inſurance from private Inſurers, for 1100 *l.* on the Ship, Tackle, and Goods, at and from *London* to *Peterſburgh*, and at and from thence back again to *London*; which Policy was ſigned by ſeveral private Underwriters, different Perſons from the preſent Defendants; and of this Sum of 1100 *l.* thus underwritten, 500 *l.* was declared to be on $\frac{11}{16}$ Parts of the Ship; and the remaining 600 *l.* to be on Goods.

Between 26th *Auguſt* and 28th *September* 1756, Mr. *Amyand* inſured 800 *l.* more, with other private Inſurers; and this latter Inſurance was upon Goods only, and was only at and from *Peterſburgh* to *London*. On 28th, 29th, and 30th of *October* 1756, Mr. *Amyand* inſured 900 *l.* more, with other private Inſurers; which laſt Inſurance was on *Goods* only, at and from the *Sound* to *London*: So that the whole Sum thus inſured by *Amyand* and Company was 2800 *l.* of which 2800 *l.* the Sum of 2300 *l.* was on Goods; the remaining 500 *l.* was on the Ship.

Several Letters being given in Evidence, it appeared, that *Meybohm* had in his *firſt* Letter on this Subject written from *Peterſburgh*, on 7th *September* 1756, to *Amyand* and Company, mentioned what Goods he ſhould ſend to them, referring to the Invoice for the Particulars: and directed them to get Inſurance thereon, and to place the Goods and the Inſurance to a particular Account, which he named in his Letter; in which he alſo ſpecified ſome Iron, which was for Mr. *Amyand*'s own Account. This Letter Mr. *Amyand* afterwards received; and in Conſequence of it, made the Inſurance accordingly, upon the

the 28th, 29th, and 30th of the ſame *October*, as before mentioned.

Meybohm, having ſhipped the Goods, indorſed the Bills of Lading to one Mr. *John Fameſz* in *Moſcow*; who on the 7th of *October* 1756, wrote to his Correſpondent Mr. *Uhthoff*, here in *London*, to inſure theſe Goods. In this Letter, he deſires Mr. *Uhthoff* to inſure the whole, that he *(Fameſz)* might be ſafe in all Events; for he ſuſpected theſe Goods were intended to be conſigned by *Meybohm* to ſomebody elſe, and perhaps might be inſured by ſome other Perſon: And he ſays, they were transferred to him, in Conſideration of his being in Advance to *Meybohm* more than their Amount. This Letter from Mr. *Fameſz* was received by Mr. *Uhthoff*, on the 15th *November*, 1756.

Mr. *Uhthoff* accordingly applied to the Defendants, the *London Aſſurance Company*; and diſcloſed to them, at the ſame Time, all theſe Particulars: And they, upon the 16th of *November*, 1756, after being thus apprized, that there might be another Inſurance, made the Inſurance in Queſtion, for 2316*l.* on the Goods, at and from the *Sound* to *London*: the Goods were loſt in the Voyage. Mr. *Uhthoff*'s Inſurance was made by the Plaintiffs *Godin Guion* and Company, who are Inſurance Brokers; and they declare, that this Inſurance (which is expreſſed to be made by them, as well in their own Names, as for and in the Name and Names of all and every other Perſon or Perſons, to whom the ſame doth, may, or ſhall appertain, in Part or in all) was made by Order of *Henry Uhthoff*, Eſq. This Declaration is indorſed upon the Policy, and is dated 18 *November*, 1756.

There is no Doubt, as to the Value of the Goods, or as to the Loſs of them. And it is admitted by the Defendants, That the Plaintiff ought to recover half the Loſs from them: But they ſay, they ought to pay only half, not the whole of the Loſs. So that the only Queſtion is, Whether the Plaintiff is intitled, upon the Circumſtances of this Caſe, and upon the Facts I have been ſtating, to recover the

whole Loſs from the preſent Defendants, or only the half of his Loſs from them, and the Remainder from the Underwriters of Mr. *Amyand*'s Policy.

The Verdict is found for the Plaintiff, for the Whole: But it is agreed to be ſubject to the Opinion of this Court, upon the Queſtion before mentioned. I ſhall firſt conſider this Queſtion as between the Inſurer and Inſured. And as between them, and upon the Foot of commutative Juſtice merely, there is no Colour why the Inſurers ſhould not pay the Inſured the Whole; for they have received a Premium for the whole Riſque. Before the Introduction of wagering Policies, it was, upon Principles of Convenience, very wiſely eſtabliſhed, that *a Man ſhould not recover more than he had loſt.* Inſurance was conſidered as an Indemnity only, in Caſe of a Loſs; and therefore the Satisfaction ought not to exceed the Loſs. This Rule was calculated to prevent Fraud, leſt the Temptation of Gain ſhould occaſion unfair and wilful Loſſes. If the Inſured is to receive but one Satisfaction, natural Juſtice ſays that the ſeveral Inſurers ſhall all of them contribute *pro rata*, to ſatisfy that Loſs againſt which they have all inſured. Where a Man makes a double Inſurance of the ſame Thing, in ſuch a Manner that he can clearly recover, againſt ſeveral Inſurers in diſtinct Policies, a double Satisfaction, the Law certainly ſays, That he ought not to recover *doubly* for the ſame Loſs, but be content with one ſingle Satisfaction for it. And if the ſame Man really and for his own proper Account, inſure the ſame Goods doubly, though both Inſurances be not made in his own Name, but one or both of them in the Name of another Perſon, yet that is juſt the ſame Thing; for the ſame Perſon is to have the Benefit of both Policies. And if the whole ſhould be recovered from one, he ought to ſtand in the Place of the Inſured, to receive Contribution from the other, who was equally liable to pay the whole.

The Act of 19 *Geo.* II. *Cap.* 37. (made to regulate Inſurances, and for Prevention of wagering Policies)

licies) expreſly prohibits the re-aſſuring, after having already inſured the ſame Thing; unleſs the former Aſſurer be inſolvent, or become a Bankrupt, or die; and it provides that even in thoſe Caſes, it ſhall be expreſſed in the Policy to be a Re-aſſurance: So that, here, if Mr. *Fameſz* had himſelf made a ſecond Aſſurance upon the ſame Goods, and was to have had the Benefit of both the Aſſurances himſelf, it had been within the Act. But if *Fameſz* was not to have the Benefit of both Policies in all Events, then it can never be conſidered as a double Policy.

It hath been objected, that the Indorſement of the Bills of Lading transferred *Meybohm*'s Intereſt in all Policies by which the Cargo aſſigned was inſured; and therefore *Fameſz* has a Right to Mr. *Amyand*'s Policy; and that *Fameſz*, being the Aſſignee of *Meybohm*, is the Ceſtuy que Truſt of it, and may recover the Money inſured; and even that he may bring Trover, or Detinue, for the very Policy itſelf; and it is urged from hence, that he either will or may have a double Satisfaction for the ſame Loſs.

But, allowing that by the Indorſement of the Bills of Lading and aſſigning the Cargo to *Fameſz*, he ſtands in the Place of *Meybohm* in Reſpect of his Inſurances, yet Mr. *Amyand* has an Intereſt of his own, and had actually inſured the Ship and Goods, and the Sum of 1900*l.* upon both together, prior to any Directions or Intimation received from Mr. *Meybohm*, to inſure for him. Various People may inſure various Intereſts, on the ſame Bottom; as one Perſon for Goods, another for Bottomry, *&c.* And here Mr. *Amyand* had an Intereſt of his own, diſtinct from the Intereſt of *Meybohm*. He had a Lien upon thoſe very Goods as a Factor to whom the Balance was due: and he had the ſole Intereſt in the Ship, which was a Part of the Things inſured by him. It is far from appearing, that even his laſt Inſurance (in *October*) was made on the Account of *Meybohm*, or as Agent for him: So far from it, Mr. *Amyand* inſiſts upon it for his own Benefit, as he expreſly declared at the Trial, and alſo lately refuſes to

give

give it up or to ſuffer his Name to be uſed by the Plaintiff; though he was a Witneſs for the Defendants, and was produced by them, and inclined to ſerve them: So that the Foundation of this Argument, urged by the Defendant's Counſel, fails them; and there is, in Reality, Nothing to ſupport it.

But even ſuppoſing, that Mr. *Amyand* had made his Inſurance, not upon his own Account, but as Agent or Factor for Mr. *Meybohm*, and upon the Account of *Meybohm*; yet, even then, *Fameſz* can never come againſt *Amyand*'s Underwriters, or come at *Amyand*'s Policy, to his own Uſe. For Mr. *Amyand*, the Factor for *Meybohm*, has Poſſeſſion of the Policy, and appears to have been a Creditor of *Meybohm*'s upon the Balance of Accounts between them at the Time when he made the Inſurance. And I take it to be now a ſettled Point, that a Factor, to whom a Balance is due, has a Lien upon all Goods of his Principal, ſo long as they remain in his Poſſeſſion. *Kruzer et al.* v. *Wilcox et al.* was a Caſe in Chancery in *March* 1754, upon this Head. It came on firſt, before Sir *John Strange*, then Maſter of the Rolls; who decreed an Account, and directed Allowances to be made for what the Factor had expended on Account of the Ship or Cargo; and reſerved all further Directions, till after the Maſter's Report. It came on again, afterwards, for further Directions, after the Maſter's Report, before the Lord Chancellor; who was attended by four eminent Merchants, who were interrogated by him publickly: After which, he took Time to conſider of it; and on firſt of *February* 1755, decreed that the Factor has a Lien on Goods conſigned to him; not only for incident Charges, but as an Item of mutual Account for the general Balance due to him, ſo long as he retains the Poſſeſſion: But if he parts with the Poſſeſſion of the Goods, he parts with his Lien; becauſe it cannot be retained as an Item for the general Account. And there was another Caſe in the ſame Court, of *Gardiner* v. *Coleman*, in *June* 1755, in which, the former

Caſe,

Caſe, determined as I have mentioned, was conſidered as a Point ſettled: And this latter Caſe, of *Gardiner* v. *Coleman*, was decreed agreeably to it: So that Mr. *Amyand*, even conſidered as a Factor or Agent to *Meybohm*, and as making the Inſurance upon *Meybohm*'s Account, is yet intitled to retain the Policy, *Meybohm* being indebted to him upon the Balance of the Account between them; and he has a Lien upon the Policy, whilſt it continues in his Poſſeſſion. Therefore, even in this View of the Caſe, Mr. *Fameſz* muſt firſt have paid to Mr. *Amyand* the Balance of his (*Amyand*'s) Account, before he could have gotten that Policy out of Mr. *Amyand*'s Hands: And conſequently, Mr. *Fameſz* was very far from being intitled to the Benefit of it, as a Ceſtuy que Truſt, abſolutely and entirely.

But if the Queſtion, whether *Fameſz* could take Benefit of Mr. *Amyand*'s Policy, were doubtful; yet, here, *Fameſz* inſured the Goods with the Defendants, expreſly under the Declaration of his Suſpicion, that there might have been a former Conſignation, and ſome former Inſurance made upon the Goods by ſome other Perſon; but he deſired to inſure the whole for his own Security; and this the Defendants agreed, and took the whole Premium. Mr. *Amyand* inſiſted upon his Right to the whole Benefit of his own Policy, when he was examined as a Witneſs; and is now litigating it in Chancery. It would neither be juſt nor reaſonable, that *Fameſz* ſhould only recover Half of his Loſs from the Defendants, and be turned round for the other Half, to the uncertain Event of a long and expenſive Litigation. I do not believe there ever will or can be any Recovery by *Fameſz* or thoſe who ſhall ſtand in his Place againſt *Amyand*'s Underwriters. However, if thoſe Underwriters are liable to contribute to all, the Contribution ought to be amongſt the ſeveral Inſurers themſelves. But *Fameſz*, the Inſured, has a Right to recover the whole Loſs from the Defendants, upon the Policy now in Queſtion, by which they are bound to pay the

Whole,

Whole. For though here be two Inſurances, yet it is not a double Inſurance: To call it ſo, is only confounding Terms. If *Fameſz* could recover againſt both Sets of Inſurers, yet he certainly could not recover from the Underwriters of *Amyand*'s Policy, without ſome Expence; nor without firſt paying and reimburſing to Mr. *Amyand* the Premium he paid, and alſo his Charges. This is by no Means within the Idea of a double Inſurance. Two Perſons may inſure two different Intereſts, each to the whole Value; as the Maſter, for Wages; the Owner, for Freight, *&c.* But a double Inſurance is where the ſame Man is to receive two Sums inſtead of one, or the ſame Sum twice over, for the ſame Loſs, by Reaſon of his having made two Inſurances upon the ſame Goods or the ſame Ship. Mr. *Fameſz* is intitled to receive the whole from the Defendant, upon their Policy; whatever ſhall become of Mr. *Amyand*'s Policy: And they will have a Right, in Caſe he can claim any Thing under Mr. *Amyand*'s Policy, to ſtand in his Place, for a Contribution to be paid by the other Underwriters to them. But ſtill they are certainly obliged to pay the whole to him. Therefore, upon theſe Grounds and Principles, in every light in which the Caſe can be put, we are all of us clearly of Opinion, that the Verdict is right, as it now ſtands, for the Whole; and that the Poſtea be delivered to the Plaintiff. *MS. Caſes in B. R. Hil.* 31 *Geo.* II. *Godin. et al.* v. *London Aſſurance Company.*

Lord *Mansfield* delivered the Opinion of the Court upon the following Caſe. The Plaintiff being part Owner of the Ship *Onſlow*, an *Eaſt India* Ship, then lying in the *Thames*, and bound on a Voyage to *China* and back again to *London*, inſured it in and from *London*, to any Ports and Places beyond the *Cape* of *Good Hope*, and back to *London*; free from Average under Ten *per Cent.* upon the Body, Tackle, Apparel, Ordnance, Munition, Artillery, Boat, and other Furniture of and in the ſaid Ship; beginning the Adventure upon the ſaid Ship, *&c.* from and imme-

immediately following the Date of the Policy; and ſo to continue and endure till the ſaid Ship, with all her Ordnance, Tackle, Apparel, *&c.* ſhall be arrived as above, and hath there moored at Anchor 24 Hours in good Safety. And it ſhall be lawful for the ſaid Ship, in this Voyage, to proceed and ſail to and touch and ſtay at any Ports or Places whatſoever, without Prejudice to this Aſſurance. The Perils mentioned in the Policy, are the common Perils, *viz.* of the Seas, Men of War, Fire, Enemies, Pirates, *&c.* and all other Perils, Loſſes and Misfortunes, *&c.* The Premium was 7 Guineas *per Cent.* with the uſual Abatement of 2 *per Cent.* in Caſe of a Loſs.

The Ship ſailed, *&c.* and arrived in the River *Canton* in *China*; where ſhe was to ſtay, to clean and refit, and for other Purpoſes. Upon her Arrival there, the Sails, Yard, Tackle, Cables, Rigging, Apparel, and other Furniture were, by the Captain's Order, taken out of her, and put into a Warehouſe, called a Bank Saul, built for that Purpoſe on a Sand Bank or ſmall Iſland, lying in the ſaid River, near one of the Banks called Bank-Saul Iſland, about 200 or 220 Yards in Length, and 40 or 50 Yards in Breadth; in order to be repaired, kept dry, and preſerved, till the Ship ſhould be heeled and cleaned and refitted. Some Time after this, a Fire accidentally broke out in the Bank-Saul belonging to a *Swediſh* Ship; and communicated itſelf to another Bank-Saul, and from thence to the Bank-Saul belonging to the *Onſlow*; and conſumed the ſame, with all the Sails, Yards, Tackle, Cables, Rigging, Apparel, and other Furniture belonging to the *Onſlow*, which were therein.

It was ſtated, that it was the univerſal and well-known Uſage, and has been ſo for a great Number of Years, for all *European* Ships which go a *China* Voyage, except *Dutch* Ships, who for ſome Years paſt have been denied this Privilege by the *Chineſe*, and look upon ſuch Denial as a great Loſs when they arrive near this Bank-Saul Iſland in the River *Canton*,

Canton, to unrig the Ship, and to take out her Sails, Yards, Tackle, Cables, Rigging, Apparel, and other Furniture; and to put them on Shore, in a Bank-Saul built for that Purpoſe on the ſaid Iſland, in the Manner that had been done on the preſent Occaſion by the Captain of the *Onſlow*, in order to be there repaired, kept dry and preſerved, until the Ship ſhould be heeled, cleaned and refitted. And the Caſe further ſtates, that it appears, that the ſo doing is prudent, and for the common and general Benefit of the Owners of the Ship, the Inſurers, and Inſured, and all Perſons concerned in the Safety of the Ship. The Ship arrived from her ſaid Voyage, in the *Thames*, in *September* 1755; having been unrigged, and put in the beſt Condition the Nature of the Place and Circumſtances of Affairs would permit. Now the Queſtion is, Whether this was a Loſs for which the Inſurers are reſponſible, within the Intent and Meaning of this Policy of Inſurance.

By the expreſs Words of the Policy, the Defendants have inſured the Tackle, Apparel, and other Furniture of the Ship *Onſlow* from Fire, during the whole Time of her Voyage, until her Return in Safety to *London*, without any Reſtriction. Her Tackle, Apparel, and Furniture were inevitably burnt in *China*, during the Voyage, before her Return to *London*. The Event, therefore, which has happened, is a Loſs within the general Words of the Policy; and it is incumbent upon the Defendants to ſhew, from the Manner in which this Misfortune happened, or from other Circumſtances, that it ought to be conſtrued a Peril which they did not undertake to bear.

From the Nature, Object and Utility of this Kind of Contract, Conſequences have been drawn; and a Syſtem of Conſtruction eſtabliſhed, upon the ancient and inaccurate Form of Words in which the Inſtrument is conceived. The mercantile Law, in this Reſpect, is the ſame all over the World. For, from the ſame Premiſſes, the ſound Concluſions of

Reaſon

Reaſon and Juſtice muſt univerſally be the ſame. Hence, among many other, the following Rules have been ſettled. If the Chance is varied, or the Voyage altered by the Fault of the Owner or Maſter of the Ship, the Inſurer ceaſes to be liable; becauſe he is underſtood to engage that the Thing ſhall be done, ſafe from fortuitous Dangers, provided due Means are uſed by the Traders to attain that End. But the Maſter is not in Fault, if what he did was done in the uſual Courſe, or neceſſarily *ex juxtâ Cauſa*. The Inſurer in eſtimating the Price at which he is willing to indemnify the Trader againſt all Riſques, muſt have under his Conſideration the Nature of the Voyage to be performed, and the *uſual* Courſe and Manner of doing it. Every Thing done in the *uſual* Courſe muſt have been foreſeen and in Contemplation, at the Time he engaged. He took the Riſque, upon a Suppoſition that what was uſual or neceſſary would be done. It is abſurd to ſuppoſe, when the End is inſured, that the uſual Means of attaining it are meant to be excluded. Therefore, when Goods are inſured till landed; without expreſs Words, the Inſurance extends to the Boat, the uſual Method of landing Goods out of a Ship, upon the Shore. If it is uſual to ſtay ſo long at a Port, or to go out of the Way, the Inſurer is conſidered as underſtanding that Uſage. *Bond* v. *Gonſales*, 2 *Salk.* 445. was ſo ruled by Lord Chief Juſtice *Holt*. If Goods are inſured on board one Ship, to a Port; and from thence, on board another Ship, the firſt that can be got; the Inſurance extends through all the intermediate Steps of removing from one Ship to the other, as uſual.

All this has been determined in the Caſe of *Tierney* v. *Etherington*, at *Guildhall*, 5th *March* 1743. That was an Inſurance on Goods in a *Dutch* Ship, from *Malaga* to *Gibraltar*, and at and from thence to *England* and *Holland*, both or either, on Goods as here under agreed; beginning the Adventure from the loading, and to continue till the Ship and Goods be arrived

arrived at *England* or *Holland*, and there ſafely landed. The Agreement was, That upon the Arrival of the Ship at *Gibraltar*, the Goods might be unloaded, and re-ſhipped in one or more *Britiſh* Ship or Ships, for *England* and *Holland*; and to return One *per Cent.* if diſcharged in *England*. It appeared on Evidence, that when the Ship came to *Gibraltar*, the Goods were unloaded, and put into a Store Ship, which it was proved was always conſidered as a Warehouſe; and that there was then no *Britiſh* Ship there. Two Days after the Goods were put into this Store Ship, they were loſt in a Storm. For the Defendant, it was inſiſted that the Inſurance was only upon the *Dutch* and *Britiſh* Ships; and that it did not extend to the Store Ship; which is conſidered as a Warehouſe at Land, and ſo not a Peril at Sea. For the Plaintiff it was inſiſted, that this was a Loſs in the Voyage: for the Policy is, for all Loſſes at *Gibraltar*, as well as to and from that Place. If there had been a *Britiſh* Ship there, and the Goods had been put into a Lighter, in Order to go to the *Britiſh* Ship, and loſt in the Way; that would have been a Loſs within the Policy. We have Liberty to unload and re-ſhip; and therefore have a Liberty to uſe all Means in Order to do that.

Lee, Chief Juſtice, ſaid, It is certain, that in the Conſtruction of Policies, the *Strictum Jus*, or *Apex Juris* are not to be laid hold on: But they are to be conſtrued largely for the Benefit of Trade, and for the Inſured. Now it ſeems to be a ſtrict Conſtruction, to confine this Inſurance only to the unloading and re-ſhipping, and the Accidents attending that Act. The Conſtruction ſhould be according to the Courſe of Trade in this Place. And this appears to be the uſual Method of unloading and re-ſhipping in that Place; *viz.* That when there is no *Britiſh* Ship there, then the Goods are kept in Store Ships. He added, that where there is an Inſurance on Goods on board ſuch a Ship, that Inſurance extends to the carrying the Goods to Shore in a Boat. So if an Inſu-

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rance be of Goods to ſuch a City; and the Goods are brought in ſafely to ſuch a Port, though diſtant from the City; that is a Compliance with the Policy, if that be the uſual Place to which the Ships come. And therefore as here is a Liberty given of unloading and re-ſhipping, it muſt be taken to be an inſuring under ſuch Methods as are proper for the unloading and re-ſhipping. Here is no Neglect on the Part of the Merchant (the inſured); for the Goods were brought into Port the 19th, and were loſt the 22d of *November*. This Manner of unloading and re-ſhipping is to be conſidered as the neceſſary Means of attaining that which was intended by the Policy; and ſeems to be the ſame as if it had happened in the Act of re-ſhipping from one Ship to the other. And as this is the known Courſe of Trade, it ſeems extraordinary if it was not an Act intended. This is not to be conſidered as a Suſpenſion of the Policy, during the unloading and re-ſhipping from one Ship to another. For, as the Policy would extend to a Loſs happening in the unloading and re-ſhipping from one Ship to another, ſo any Means to attain that End come within the Meaning of the Policy. And accordingly a Verdict was given for the Plaintiff. In *Eaſter* Term following, a new Trial was moved for: But it was refuſed, by Lord Chief Juſtice *Lee*, Mr. Juſtice *Chapple*, and Mr. Juſtice *Deniſon*; Mr. Juſtice *Wright* indeed being of a different Opinion, namely, That it was a Removal at the Peril of the Inſured.

In the preſent Caſe, the ſame Reaſoning will hold. And, in general, what is uſually done by ſuch a Ship, with ſuch a Cargo, in ſuch a Voyage, is underſtood to be referred to by every Policy, and to make a Part of it, as much as if it was expreſſed. The Uſage, being foreſeen, is more ſtrongly allowed to be purſued, than what is left to the Maſter's Direction upon unforeſeen Events: Yet if the Maſter, *ex juſtâ Cauſa*, goes out of the Way, as, to refit, or to avoid Enemies, Pirates, *&c.* the Inſurance continues.

Upon theſe Principles, it is difficult to frame a Queſtion which can ariſe out of this Caſe, as ſtated. The only Objection is, That the Sails, *&c.* were burnt in a Bank-Saul, and not in the Ship; upon Land, and not at Sea or upon Water; and, being appurtenant to the Ship, Loſſes and Dangers aſhore could not be included in the Policy.

The Anſwer is obvious. (1ſt.) The Words of the Policy make no ſuch Diſtinction. (2dly.) The Intent makes no ſuch Diſtinction. Many Accidents might happen at Land, even to the Ship. Suppoſe a Hurricane to drive it a Mile on Shore; or an Earthquake may have a like Effect. Suppoſe the Ship to be burnt in a dry Dock; or ſuppoſe Accidents to happen to the Tackle upon Land, taken from the Ship, while accidentally or occaſionally refitting; as on Account of a Hole in its Bottom, or other Miſchance. Theſe are poſſible Caſes. But what might ariſe from an accidental Occaſion of refitting the Ship, is not near ſo ſtrong as a certain neceſſary Conſequence of the ordinary Voyage, which the Parties could not but have in their direct and immediate Contemplation. Here the Defendants knew that this Ship muſt be heeled, cleaned and refitted, in the River of *Canton*. They knew that the Tackle, *&c.* would then be put in the Bank-Saul; they knew it was for the Safety of the Ship, and prudent, that they ſhould be put there. Had it been an accidental Neceſſity of refitting, the Maſter might have excuſed taking them out of the Ship, *ex juſtâ Cauſa*. But deſcribing the Voyage is an expreſs Reference to the uſual Manner of making it, as much as if every Circumſtance was mentioned. Was the Chance varied by the Fault of the Maſter? It is impoſſible to impute any Fault to him. Is this like a Deviation? No: It is *ex juſtâ Cauſa*; which always excuſes. And yet the Counſel for the Plaintiff, being preſſed in his Argument, was obliged to inſiſt, That it reſembled a Deviation: Which determines the Inſurance, and diſcharges the Inſurer. Anſwer. This ſuppoſes the Parties to in-

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ſure from *London* and back again, knowing that the Policy would be determined in the River *Canton*; which would be abſurd. Beſides, it ought to make a Difference in the Premium; yet the Underwriters have all kept the Premium upon other *China* Voyages. One Objection was formed by comparing this Caſe to that of changing the Ship or Bottom, on board of which Goods are inſured; which the Inſured have no Right to do. Anſwer. There, the identical Ship is eſſential: For that is the Thing inſured. But that Caſe is not like the preſent. Another Objection was, That Policies ought to be conſtrued ſtrictly, and not to be extended to Caſes omitted; which latter Poſition is true, and muſt be agreed. Anſwer. But that is not the preſent Caſe; for this is not *Caſus omiſſus*, but clearly within the View, and *bonâ fide* Intent of the Policy.

Here the Defendant knew the Tackle and Furniture would be put in this Bank-Saul, as the uſual, certain Conſequence of the Voyage at Sea; which always made it neceſſary to heel, clean and refit the Ship in the River of *Canton*. Had the Inſurers been aſked, they muſt, for their own Sakes, have inſiſted they ſhould be put there, as the beſt and ſafeſt Method. They would have had Reaſon to complain, if, from their not being put there, a Misfortune had happened. In that Caſe, the Maſter would have been to blame, and by his Fault would have varied the uſual Chance. They have taken a Price for ſtanding in the Plaintiff's Place, as to any Loſſes he might ſuſtain in performing the ſeveral Parts of the Voyage; of which, this was known and intended to be one. Therefore we are very clearly of Opinion, that in every Light and in every View of this Caſe, in Reaſon and Juſtice, and within the Words, Intent and Meaning of the Policy, and within the View and Contemplation of the Parties to the Contract, the Inſurers are liable to anſwer for this Loſs. Wherefore let the Poſtea be delivered to the Plaintiff. *MS. Caſes in B. R. Eaſt.* 30 *Geo.* II. *Pelly* v. *Royal Exchange Aſſurance.*

Parol Acceptance is ſufficient in Action againſt the Acceptor of a Bill *of* Exchange.

AN Action was brought againſt the Defendant as an Acceptor of an Inland Bill of Exchange: Upon the Trial, before Lord *Hardwicke*, at *Guildhall*, it appeared upon the Evidence, that the Acceptance was by Parol only. The Plaintiff had a Verdict, but this Point was ſaved to the Defendant, Whether or not a parol Acceptance of an Inland Bill of Exchange, is ſufficient to warrant an Action againſt the Acceptor, upon the Statute 9 & 10 *W.* III. *c.* 17. and 3 & 4 *Ann. c.* 9. And it was moved accordingly in *B. R.*

Mr. *Abney*, for the Plaintiff, argued, that the Judges have extended Actions on Bills of Exchange, in Favour of Merchants and Trade.

Holt, Chief Juſtice, ſaid, he remembered the firſt Action brought on a Bill of Exchange, 2 *Lut.* 1585.

Treby, Chief Juſtice, ſaid, that Bills of Exchange were firſt allowed between *Engliſh* and *foreign* Merchants; next, among *Engliſh* Merchants; afterwards, among all Traders in general: and laſtly, among all Perſons whatſoever, 2 *Vent.* 292. And therefore if a Gentleman draws a Bill of Exchange, he is a Merchant to that Purpoſe. The two Acts concerning inland Bills of Exchange, are made for the Benefit of the Drawer, that he ſhould not be chargeable for Intereſts and Coſts, without a Profit. *Salk.* 131. Acceptance for Part is good. *Wagerſloffe* and *Keene*, *Mich.* 6 *Geo.* I. [*Stran.* 214.] *Comb.* 452. Theſe Reſolutions ſeem to be founded on *Molloy*, who ſays the ſame. Acceptance by a Stranger is good, ſo as to bind the Stranger for the Honour of the Drawer. *Carth.* 459. Acceptance after Time of Payment is elapſed, is good. *Salk.* 129. Though the Act 4 & 5 *Ann.* provides, that no Acceptance of an inland Bill of Exchange ſhall charge any Perſon whatſoever, unleſs

unleſs underwritten, or indorſed; yet the laſt Clauſe in the Act ſets all at large again, which is a Proviſo, that nothing contained in this Act ſhall diſcharge any Remedy, which any Perſon may have againſt the Drawer, Acceptor, or Indorſor of any ſuch Bill. Therefore, as theſe Acts have made no Alteration, as to this Point, it is to be ſeen what was the Cuſtom of Merchants before thoſe Statutes, and what it is now. In *Molloy* 295, and 300, it is ſaid, that an Acceptance binds without writing, and that a ſmall Matter amounts to an Acceptance, ſo as there be an Underſtanding between the Parties; that if it is ſaid, Leave your Bill with me, and I will accept it, that is a good Acceptance. *Mich.* 12 *Geo.* I. *Wilkinſon* and *Ludwidge* [*Stran.* 648.] at *Niſi prius* before Lord *Raymond*, Action on a foreign Bill of Exchange, againſt the Defendant, as Acceptor. On the Evidence, it appeared, that the Defendant in a Letter ſaid, I will pay it, if you will let me firſt ſend to my Correſpondent in *Ireland*. It was inſiſted upon by the Defendant, that this was only a conditional Promiſe of Acceptance, but the Chief Juſtice held it a good Acceptance. *Mich.* 6 *Geo.* II. *Cox* and *Coleman*; a foreign Bill of Exchange was drawn upon the Defendant and returned, and proteſted for Non-Acceptance, and afterwards the Defendant ſaid to the Plaintiff, If the Bill comes back I will pay it; and this was held a good Acceptance. There never was any Difference between foreign and inland Bills of Exchange, as to the Matter of Acceptance, by common Law nor by Statute; but only in the Matter of Proteſts, they differ at Common Law.

Mr. *Strange*, on the ſame Side, argued, that there is no Doubt, that before 9 & 10 *W.* III. a parol Acceptance was good, as appears by *Molloy*. The Alteration which that Act has made, as to theſe Bills of Exchange, is, that it makes an underwritten Acceptance neceſſary, to warrant a Proceſs of Non-Payment, ſo as to charge the Drawer for Principal, Intereſt, and Charges; but the Act does not ſay,

that an Acceptance, though not in Writing, ſhall not be ſufficient to any other Purpoſe than that particular one there mentioned. This Act of 9 & 10 *W.* III. does not extend to Proteſts for Non-Acceptance, and therefore, in Order to elude this Act, it was cuſtomary with Merchants to refuſe to accept; and therefore to ſupply this Defect, was the Statute 3 & 4 *Ann.* made, which gives a Proteſt for Non-Acceptance, and then provides that no Acceptance ſhall charge the Drawer with Intereſts and Coſt, on a Proteſt for Non-Payment, unleſs it be underwritten, or indorſed; and this is all the Innovation that is made by the Statute; but there is Nothing in it concerning an Action againſt the Acceptor; but it is made merely for the Benefit of the Drawer, that he ſhould not be charged with Intereſt and Coſts, upon a parol Acceptance. *Salk.* 231. 6 *Mod.* 881. This appears by the laſt Proviſion of the Act, which is, that Nothing contained in the Act ſhall diſcharge any Remedy which any Perſon may have againſt any Drawer, Acceptor, or Indorſor. Now the Plaintiff had, by the Common Law, a Remedy to charge the Acceptor for the Principal, and that ſtill remains. And this has been the conſtant Courſe of the City of *London*, ever ſince this Act, as well as before. *Scot* and *Anderſon*, *Mich.* 1 *Geo.* II. a parol Acceptance of an inland Bill of Exchange, was held good by *Raymond* Chief Juſtice, at *Niſi prius*, *London*.

Mr. *Marſh*, *contra*, argued, that as many Inconveniencies aroſe from a ſlight Acceptance of an inland Bill of Exchange, the Deſign of the above mentioned Act was, that an Acceptor ſhould be made liable by his ſolemn Act of underwriting and indorſing. In the Act of Queen *Anne*, are theſe general Words, "That no Acceptance ſhall be ſufficient to charge any Perſon whatſoever, except underwritten, or indorſed." And there can be no Cuſtom of Merchants, as to the inland Bills of Exchange, ſince *Holt*, Chief Juſtice, ſaid he remembered the firſt Action ever brought on them. And as to foreign Bills, in

Lutw.

Lutw. 887. is a Declaration on a foreign Bill; and when it comes to an Averment of the Fact, it is particularly ſaid *acceptavit et manu ſua ſubſcripſit.* In the Caſe of *Rex* and *Meggott*, at *Niſi prius*, in *London*, *Hil.* 7 *Geo.* II. *C. B.* it was ruled by *Eyre* Chief Juſtice, that a parol Acceptance of an inland Bill, was not ſufficient to charge the Acceptor.

Mr. *Abney* replied, that, according to *Molloy*, and the two Caſes before cited, a parol Acceptance is ſufficient on foreign Bills of Exchange.

Hardwicke, Chief Juſtice, ſaid, that at the Trial of the Cauſe, he was of Opinion, that the Action might be maintained againſt the Acceptor on a parol Acceptance: but that he had ſaved the Point, as it depended upon the penning of the two Acts, both very dark, but more eſpecially the laſt; and as it was ſaid to have been otherwiſe determined by *Eyre*, Chief Juſtice; but that he was now confirmed in his Opinion, and that the true Conſtruction of theſe Acts is to charge the Drawer with Principal and Intereſt, after the Proteſt; which will appear by conſidering the Purport and Intention of them: that it had been truly ſaid, that before theſe Acts, there was no Difference between foreign and inland Bills of Exchange, but in Caſe of Proteſts, for at Common Law there was no Way to charge the Drawer of an inland Bill, with Intereſt and Coſts, after a Proteſt; and therefore the firſt Act was made, that after Acceptance by underwriting, the Bills might be proteſted for Non-Payment, and that thereon Intereſt and Charges ſhould be paid by the Drawer, from the Time of the Proteſt. The Statute does not ſay the original Sum, for that is recoverable without Proteſt, but Intereſt and Charges. Then was made the Act of Queen *Anne*, which recites this Clauſe in the Act of King *William*; and the Miſchief to be remedied, is ſaid to be, that there was no Proviſion by the firſt Act for Intereſt and Charges, in caſe any Merchant refuſed to accept the Bill by underwriting, or indorſing, and this Act makes a new Proviſion and enables them to

proteſt for Non-Acceptance, ſo that the whole Proviſion of the two Acts plainly relates to Proteſts, the firſt giving a Remedy upon Proteſts for Non-Payment, and the ſecond upon Proteſts for Non-Acceptance. Indeed the fifth Section has expreſs Words, that no Acceptance ſhall charge any Perſon whatſoever, unleſs underwritten or indorſed; and if theſe Words ſtood ſingly, it would be hard to ſay, that any Remedy lay againſt the Acceptor, by Reaſon of a parol Acceptance; but then the Generality of theſe Words is reſtrained by the Words that immediately follow, that if ſuch Bill be not accepted by ſuch Underwriting or Indorſement, no Drawer ſhall be liable to pay Coſts, Damages or Intereſt thereon: So that the firſt general Words are only to be conſidered to relate to the charging the Drawer with Intereſt and Coſts. Nothing is more common than for an Act of Parliament to have general Words at firſt, which are afterwards reſtrained by particular ones.

The Proviſo at the End of the Act is alſo very material to the preſent Point, that Nothing in the Act contained ſhall diſcharge any Remedy againſt the Drawer, Acceptor or Indorſor of any ſuch Bill. The Conſtruction of this Clauſe is, that it relates to the Remedy for the principal Sum in the Bill; for theſe two Acts relate to, and make a Proviſion for Proteſts, which are to be followed with Intereſt, Damages and Charges upon the Drawer; and therefore this is a natural Proviſo, that this ſhould not extend to diſcharge any Remedy that they might have for the principal Sum, though there were no ſuch Proteſt. The Caſes of foreign Bills of Exchange are not much to this Purpoſe, ſince the preſent Queſtion only turns upon the Act of Parliament. The Caſe of *Scot* and *Anderſon* is indeed in Point, and that ſeems to have been the Opinion of Lord *Raymond*, at the latter End of his Time. Lord *Parker* was likewiſe of the ſame Opinion *Holdſworthy* and *Thicary*, *Paſch.* 11 *Ann. B. R.* an Action on the Caſe on an inland Bill of Exchange againſt the Acceptor; at the

Trial

Trial Exception was taken that the Acceptance was only by parol. But *Parker*, Chief Juſtice, held, that it was ſufficient; for that the Act only extended to the Loſs of Intereſt and Damages by Reaſon of not accepting by underwriting, but not to the principal Sum on the Bill. *Smith* and *Plunket*, *Mich.* 11 *Ann.* in *B. R.* the ſame Determination on the ſame Objection.

His Lordſhip added, that this Point did not ſeem to be ſo ſettled to the contrary in *C. B.* as had been maintained at the Bar, for that he had been informed by one of the Judges of that Court, of a late Caſe which came before them: *Orm* and *Holiday*, *Hil.* 3 *Geo.* II. an Action on the Caſe againſt an Acceptor of a Bill of Exchange, Exception was made at the firſt Trial, that the Acceptance was not made in Writing; and therefore not binding. It was moved in Court; that they being informed that the Opinion of Lord *Raymond* was, as before cited, all inclined to the ſame Opinion; indeed no final Judgment was given, becauſe the Defendant thought fit to acquieſce in the Inclination of the Court, and never moved it again. The new Trial was denied *per tot. Cur. Rep.* in *B. R.* in Time of Lord *Hardwicke*, 136. *Mich.* 8 *Geo.* II. *Lumley* v. *Palmer*.

Bank Notes cannot be taken in Execution.

ON a Motion to ſet aſide an Execution on a Judgment confeſſed, for Irregularity, it was ruled, 1ſt, That where the Judgment has been confeſſed with an Expreſs *ceſſet executio*, till a certain Time, and Execution is taken out within that Time, the Court may ſet it aſide; but when there are long collateral Agreements, and the Defendant alleges, that by Reaſon of them, Execution ought to ſtay, this Court cannot enter into and try the Equity ariſing on them; but the Defendant, if aggrieved, muſt apply for Relief to Chancery. 2dly, Nothing can be taken in Execution that cannot be ſold, as Deeds, Writings,

Writings, &c. 3dly, That Bank Notes cannot be taken in Execution; for though they are aſſignable over, yet they remain, in ſome Meaſure, Choſes in Action; and the Sheriff or his Bargainee, cannot bring an Action on them without Aſſignment, notwithſtanding the Act for aſſigning them. And they are ſo much Things in Action that it was neceſſary to have a new Act, in order to make the ſtealing of them Felony. *Rep.* in *B. R.* in Lord *Hardwicke*'s Time, 51. *Trin.* 7 & 8 *Geo.* II. *Francis* v. *Naſh.*

Party to whom a Bill is payable ſhall not make uſe of the ſecond Bill of Exchange to charge the Drawer, when the firſt Bill was accepted, and he ſtaid beyond the uſual Time, and did not proteſt the firſt Bill for Non-Payment.

ACTION againſt Defendant, the Drawer of a foreign Bill of Exchange: The Bill on which the Action was brought was drawn at *Denmark*, upon one Mr. *Cheney*, dated *Aug.* 8, 1733. *at two Months Sight pay this my ſecond Bill of Exchange, my firſt not being paid.* Plaintiff's Witneſſes ſwore that Plaintiff having received the firſt Bill from *Denmark* on the 14th of *Auguſt*, ſent it in a Letter into *Norfolk* to Mr. *Cheney* for Acceptance, but that it was never returned, but, as they ſuppoſed, miſcarried; that about the latter End of *January* Mr. *Cheney* died leaving his Wife Executrix, and Plaintiff having got the ſecond Bill after the Death of Mr. *Cheney*, tendered it to his Executrix, and required Payment; but ſhe refuſing, Plaintiff proteſted it, and brought this Action againſt the Drawer of it. But Mr. *Bootle* of Counſel with the Defendant inſiſted, that the firſt Bill had been actually accepted by Mr. *Cheney* in his Life-time, and to prove it he produced Plaintiff's Letter, dated 14th *Auguſt*, which incloſed the Bill and required Acceptance of it, and alſo another Letter from Plaintiff to Mr. *Cheney*, requiring Payment

Payment thereof, and requiring him alſo to remit him the Intereſt due for the ſame, which he computed in his Letter, and tells him it came to Twopence Halfpenny a Day, every Day it continued unpaid, which he ſays he ſhould have been glad Mr. *Cheney* would have ſaved himſelf, for it was not equal to Plaintiff's Diſappointment for Non-Payment: And alſo another Letter ſent by Plaintiff to *Cheney*'s Widow, requiring Payment of the Bill, and ſaying he ſhould look upon her as liable to pay the Money, and deſiring ſhe would ſave herſelf and the Drawer of the Bill the Trouble he ſhould be obliged to put them to, if the Bill was not paid. From all which Mr. *Bootle* concluded, that it manifeſtly appeared that the Bill had been accepted by Mr. *Cheney* in his Life-time, and that Plaintiff had given him Credit for the Money, and that therefore, as Plaintiff never proteſted the Bill for Non-Payment, nor gave Notice to the Drawer that it was not ſatisfied, it muſt be preſumed that he took the Bill on himſelf, and truſted to Mr. *Cheney* as his Paymaſter; and that Plaintiff ſhould not, after this Length of Time, have any Remedy againſt the Drawer; and of this Opinion was the Chief Juſtice, who ſaid there could be no Doubt but that the firſt Bill had been accepted, or elſe there could have been no Room for Plaintiff to have demanded Intereſt of Mr. *Cheney*, neither could he have any Remedy againſt *Cheney*'s Executrix without ſuch Acceptance; and if ſo, then the Plaintiff having truſted ſo long on Mr. *Cheney*'s Credit, muſt not now come upon the Drawer; for this would be making a wrong Uſe of the ſecond Bill, which was made only as a Security leſt the firſt might be loſt, but not to intitle Plaintiff to bring any Action upon it, after the firſt Bill was accepted; for that would be making uſe of it as a new Bill. Then the Plaintiff's Counſel Mr. *Chute* inſiſted he could prove an actual Promiſe by the Drawer after Mr. *Cheney*'s Death to pay this Bill, and ſaid there was a proper Count laid in the Declaration for that Purpoſe;

poſe; which Promiſe, as appeared afterwards by the Evidence, was thus: Defendant being at *London* called at Plaintiff's Houſe, and being informed that the Bill was not paid by *Cheney*, he aſked whether he was liable to make it good, and Plaintiff, or his Clerk, told him, Yes; whereupon he deſired that the Plaintiff would have a little Patience, for he was going into the Country, and would ſpeak to *Cheney*'s Executrix, and would take the needful Care that the Bill ſhould be paid; but this, the Chief Juſtice ſaid, was not ſufficient to bring it within the Promiſe laid in the Declaration, which was founded on the Conſideration that he was liable, and if that was founded on a Miſtake, as being miſinformed by the Plaintiff, or his Clerk, this ought not to bind him; and therefore, upon the whole, Lord *Hardwicke*, Chief Juſtice, thought Defendant not at all liable under theſe Circumſtances: And thereupon Plaintiff was nonſuited. *MS. Rep.* at the Sittings in *London*, before Lord *Hardwicke*, *Trin.* 9 *Geo.* II. *Collet* v. *Jennis.*

FINIS.